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Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1637

R. B. ROBINSON, INDIVIDUALLY AND AS NEXT OF FRIEND OF C. K. ROBINSON, A MINOR; AND IN A REPRESENTATIVE CAPACITY ON BEHALF OF ALL SETTLORS AND NATURAL PERSON BENEFICIARIES OF TRUSTS,

Petitioner,

vs.

STANLEY T. KUSPER, COUNTY CLERK OF THE COUNTY OF COOK, ET AL.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

Petitioner, R. B. Robinson, individually and in a representative capacity on behalf of all settlors and natural person beneficiaries of Illinois trusts, petitions for a writ of certiorari to review the Judgment of the Supreme Court of Illinois in this case.

OPINION BELOW.

The decision of the Illinois Supreme Court is officially reported at 69 Ill. 2d 374. A copy of the decision is set forth in Petitioner's Appendix (App., pp. A1-A17).

JURISDICTION.

The Judgment of the Supreme Court of Illinois was entered on November 30, 1977. Petitioner filed a timely Petition for Rehearing which was denied on January 26, 1978. The Jurisdiction of this Court is invoked under 28 U. S. C. § 1257 (3). An extension of time to May 17, 1978 has been granted by this Court for the filing of this Petition.

QUESTIONS PRESENTED.

The questions presented are:

1) Whether the Supreme Court of Illinois in construing Article IX-A of the Illinois Constitution of 1870 as not exempting trusts for the benefit of natural persons from personal property taxation, has deprived petitioner, and the members of the class petitioner represents, of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States; and

2) Whether the Supreme Court of Illinois, in giving determinative effect to legislative activity carried out subsequent to, and in derogation of, rights intended to be granted by a constitutional amendment, has impaired the obligation of contracts in violation of Section 10 of Article I of the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

CONSTITUTION OF THE UNITED STATES:

Section 1 of the Fourteenth Amendment:

AMENDMENT [XIV.]

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 10 of Article I:

"Section 10. No State shall * * * * pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, * * * *."

ILLINOIS CONSTITUTION OF 1870:

Article IX-A:

"Section 1: Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals."

Section 2 of Article XIV:

"§ 2. Amendments to this Constitution may be proposed in either House of the General Assembly, and if the same shall be voted for by two-thirds of all the members elected to each of the two houses, such proposed amendments, together with the yeas and nays of each house thereon, shall be entered in full on their respective journals, and said amendments shall be submitted to the electors of this State for

adoption or rejection, at the next election of members of the General Assembly, in such manner as may be prescribed by law * * * *."

ILLINOIS CONSTITUTION OF 1970:

Section 5(b) of Article IX:

"§ 5. Personal Property Taxation

(a) * * * *.

(b) Any ad valorem personal property tax abolished on or before the effective date of this Constitution shall not be reinstated.

(c) * * * *.

STATUTES:

Section 2 of "An Act to provide the manner of proposing amendments to the Constitution, and submitting the same to the electors of the State", approved March 14, 1877, as amended:

2. "The General Assembly in submitting an amendment to the Constitution to the electors, shall prepare a brief explanation of such amendment, a brief argument in favor of the same, and the form in which such amendment shall appear on the separate ballot . . . The minority of the General Assembly, if they so desire, may also prepare a brief argument against such amendment. * * * In addition to the notice hereby required to be published, the Secretary of State shall also cause the existing form of the constitutional provision proposed to be amended, the proposed amendment, the explanation of the same, the arguments for and against the same, and the form in which such amendment will appear on the separate ballot, to be published in pamphlet form in 8 point type or the equivalent thereto; and in cities, villages and incorporated towns having boards of election commissioners, the Secretary of State shall furnish such boards with a sufficient supply of such pamphlets to enable the boards to supply a copy thereof to every elector in their respective cities, villages and incorporated towns and such boards shall mail a copy of the

pamphlet to every registered elector in their respective municipalities at least 40 days prior to the election, and shall also supply copies thereof to every elector applying to them. In all counties, the Secretary of State shall furnish a sufficient supply of such pamphlets to the several county clerks to enable the clerks to supply a copy thereof to every elector in their respective counties, outside of cities, villages or incorporated towns that have a board of election commissioners and the county clerks shall mail a copy thereof to every such registered elector in their respective counties not less than 40 days prior to the election and shall also supply copies thereof to every elector applying for them. * * *" (Ill. Rev. Stat., 1975; Ch. 7½, § 2.)

STATEMENT.

A. Legislative Background of Article IX-A of the Illinois Constitution of 1870.

On June 30, 1969, the Illinois General Assembly adopted Senate Joint Resolution No. 30 (Appendix pp. A18-A22) providing for the submission to the electorate of a proposed constitutional amendment to the Illinois Constitution of 1870. The proposed amendment provided as follows:

ARTICLE IX-A

"Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals."

The General Assembly also appointed a special committee to prepare a report on the proposed amendment. The Report of the Committee, as originally prepared, contained the following language:

"that which is owned by natural persons is exempted from taxation; that which is owned by corporations, trusts, etc., is subject to taxes." (Appendix p. A27).

However, before approval by the General Assembly, this language was corrected to read as follows: "that which is owned by *or held in a fiduciary capacity for the benefit of* natural persons is exempted from taxes; that which is owned by corporations, [trusts,] etc., is subject to taxes" (added language *underlined*, deleted language in brackets). Both the Illinois House on May 6, 1970, and the Illinois Senate on May 7, 1970, approved and adopted the corrected Report. The approved corrected Report, pursuant to the requirements of law, was then published in pamphlet form by the Illinois Secretary of State and mailed to every registered voter prior to the general election of November 3, 1970. The proposed constitutional amendment to add

Article IX-A to the Illinois Constitution was adopted by the voters; was declared ratified on November 25, 1970, and became effective on January 1, 1971.

Subsequent to the adoption of the corrected Report by the Illinois General Assembly, which Report was mailed to the voters, the Illinois Senate on May 19, 1970, adopted Senate Joint Resolution No. 67 (Appendix p. A44), which said Senate Joint Resolution was concurred in by the House on May 29, 1970 (Appendix p. A45). Senate Joint Resolution No. 67, which was not adopted in accordance with Section 2 of Article XIV of the Illinois Constitution of 1870 or the provisions of the Act regarding the manner of submitting constitutional amendments to the voters and which was never mailed to the voters, provided, in part, as follows: *"by the use of the phrase 'as to individuals,' this General Assembly intended to mean a natural person, or two or more natural persons as joint tenants or tenants in common."* (Appendix pp. A44-45)

Following the adoption of Article IX-A, the Attorney General of the State of Illinois, as well as the State's Attorney of Cook County, Illinois, issued opinions to the effect that personal property held by fiduciaries for the benefit of natural persons was exempt from taxation under the Article. (Appendix pp. A47 and A51)

Section 5(b) of Article IX of the Illinois Constitution of 1970, adopted by the voters on December 15, 1970, provided as follows: "Any ad valorem personal property tax abolished on or before the effective date of this Constitution shall not be reinstated." On March 2, 1973, the Attorney General issued a second opinion to all county treasurers in the State of Illinois again stating that all personal property held in trust for the benefit of an individual was exempt under said Article IX-A of the Illinois Constitution of 1870. (Appendix p. A49)

B. Prior Litigation Concerning Article IX-A.

Subsequent to the adoption of Article IX-A, three class actions were filed questioning its constitutionality: *Lake Shore Auto Parts* v. *Korzen* and *Shapiro* v. *Barrett*, both filed in the Circuit Court of Cook County, Illinois; and *Maynard* v. *Barrett*, filed as an original action before the Illinois Supreme Court. These cases were consolidated in the Illinois Supreme Court under the caption *Lake Shore Auto Parts* v. *Korzen*.

On July 9, 1971, the Illinois Supreme Court in *Lake Shore Auto Parts* held that Article IX-A's distinction between individuals and corporations violated the equal protection clause of the Fourteenth Amendment to the United States Constitution (*Lake Shore Auto Parts Co.* v. *Korzen*, 49 Ill. 2d 137, 151). A Petition for a Writ of Certiorari was granted by this Court, which on February 22, 1973, reversed the decision of the Illinois Supreme Court and held that Article IX-A in exempting individuals from and continuing to subject corporations to personal property taxation did not violate the equal protection of the law provisions of the Fourteenth Amendment (*Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U. S. 356). Trusts were not represented in these cases or mentioned in the opinion of this Court.

Following remand the Illinois Supreme Court issued a Supplemental Opinion, holding that "*Trustees and other fiduciaries, whether corporate or not, do not own property as natural persons, and they were not exempted from taxation by Article IX-A*". (*Lake Shore Auto Parts Co.* v. *Korzen*, 54 Ill. 2d 237, 239).

Following the Supplemental Opinion by the Illinois Supreme Court, two actions were filed in the Circuit Court of Cook County, Illinois, entitled *Hanley* v. *Kusper* and *Continental Illinois National Bank & Trust Company of Chicago* v. *Kusper*. In both of these cases a declaration was sought that Article IX-A exempted from taxation personal property held by fiduciaries for the benefit of natural persons. The trial judges in the two cases reached opposite conclusions on the point. Appeals were taken

in both cases which were consolidated in the Illinois Supreme Court.

On September 26, 1975, the Illinois Supreme Court issued its opinion in the consolidated *Hanley* and *Continental Bank* cases (*Hanley* v. *Kusper*, 61 Ill. 2d 452). The Court continued to hold *voluntary* trusts not exempt from personal property taxation under Article IX-A, but overruled its prior decision in *Lake Shore Auto Parts Co.* v. *Korzen*, 54 Ill. 2d 237, by holding that *involuntary* trusts are exempt.

The Present Case.

Petitioner filed this action in the Circuit Court of Cook County, Illinois. In her Second Amended Complaint, Petitioner alleged that she was a registered voter of Illinois and had voted in favor of the proposition to add Article IX-A to the Illinois Constitution of 1870, at the general election held on November 3, 1970, and also had voted in favor of the adoption of the 1970 Constitution of Illinois, at the special election held on December 15, 1970. Prior to voting on the proposition to add Article IX-A to the 1870 Constitution, Petitioner read the official pamphlet mailed to her and other Illinois voters which specifically stated, in the portion of the pamphlet devoted to arguments against the proposed amendment, that personal property "*which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes . . .*"

Petitioner further asserted that in voting favorably on the 1970 Illinois Constitution she believed that Section 5(b) of Article IX thereof prohibited the reinstatement of the *ad valorem* tax on personal property held in trust for the benefit of natural persons, which she had understood from the pamphlet had been abolished by Article IX-A of the 1870 Constitution.

Petitioner further asserted that Senate Joint Resolution No. 67 (Appendix pp. A44-A45) of the Seventy-sixth General Assembly of Illinois was never mailed to the Petitioner and that the contents

of said Resolution were never made known to the Petitioner or to the electorate in any manner whatsoever prior to the elections of November 3 and December 15, 1970.

On December 23, 1970, after both Article IX-A of the 1870 Constitution and the 1970 Constitution had been ratified by the voters, and in reliance on the statement of the Illinois General Assembly that property held in trust for the benefit of natural persons was exempt from personal property taxation under Article IX-A and could not be reinstated under Section 5(b) of Article IX of the 1970 Illinois Constitution, petitioner created an irrevocable trust for the benefit of her son and daughter.

Petitioner further asserted that the defendant officials of Cook County, notwithstanding the foregoing, continued to assess and collect personal property taxes on the personal property held in the irrevocable trust for the tax years 1972, 1973, 1974 and 1975.

The Petitioner further alleged on behalf of herself and the classes she represents, that the Fourteenth Amendment to the Constitution of the United States; Article IX-A of the Illinois Constitution of 1870 and Section 5(b) of Article IX of the Illinois Constitution of 1970 all prohibit the *ad valorem* taxation of personal property held in trust for the benefit of natural persons, including the personal property held in the irrevocable trust for the benefit of her son and daughter. The trial court rejected Petitioner's contentions and sustained the taxation of the trust. On direct appeal, the Supreme Court of Illinois affirmed the lower court decision.

STAGE OF THE PROCEEDING AT WHICH THE FEDERAL QUESTIONS WERE RAISED.

In Petitioner's Second Amended Complaint, she asserted that the Fourteenth Amendment to the Constitution of the United States, prohibits the *ad valorem* taxation of personal property held in trust in Illinois for the benefit of natural persons under the facts of this case.

The additional federal question sought to be reviewed which arose for the first time by reason of the Judgment of the Supreme Court of Illinois is whether there has been an impairment of Petitioner's contract rights in violation of Section 10 of Article I of the Constitution of the United States.

REASONS FOR GRANTING THE WRIT.

I. THE DECISION OF THE SUPREME COURT OF ILLINOIS IN HOLDING TRUSTS FOR THE BENEFIT OF NATURAL PERSONS SUBJECT TO PERSONAL PROPERTY TAXATION, DESPITE CLEAR LEGISLATIVE INTENTION AND VOTER UNDERSTANDING TO THE CONTRARY, HAS DEPRIVED PETITIONER OF HER PROPERTY WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Petitioner submits that the Illinois Supreme Court, in refusing to give effect to the express representations made to petitioner and others by the Illinois General Assembly, an equal and coordinate branch of state government, deprived her and the members of the class she represents of their property without due process of law.

In order to insure that the electorate would be fully informed when voting on Constitutional Amendments, the Illinois General Assembly, in 1877, enacted a law providing for the manner of submitting constitutional amendments to the Illinois electorate. (Ill. Rev. Stat. 1975, Ch. 7½, Sec. 1-8)

The provisions of that Act require the Illinois General Assembly, in submitting a constitutional amendment to the electorate, to prepare a brief explanation of the amendment, a brief argument in favor of the same and the form in which such amendment will appear on a separate ballot, and authorizes a minority of the General Assembly to prepare a brief argument against the proposed amendment. The Act further requires that the proposed amendment, the explanation of the same, the arguments for and against the same, and the form in which the proposition will appear on the ballot be published in pamphlet form by the Illinois Secretary of State and mailed to every voter in the State of Illinois at least 40 days in advance of the election at which the proposition is to be voted upon by the electorate.

The report on Article IX-A, as initially prepared by the Committee, contained the following statements in the portion of the report devoted to arguments against the proposed amendment:

> *"—It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by natural persons is exempted from taxes; that which is owned by corporations, trusts, etc., is subject to taxes."*
>
> *"It will be almost impossible to administer . . . because the location . . . of shares of intangibles not owned by individuals . . . can be shifted out of State, but this is not true for tangible personalty—machinery, equipment, etc.—owned by a corporation or trust."* (Appendix p. A27.)

The Illinois General Assembly refused to approve the report as so prepared. Only after the committee corrected the first statement to state that:

> *"—It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes."* (Appendix p. A32)

and deleted the words *"or trust"* from the second statement, was the report approved by the Illinois General Assembly and mailed to all the voters in Illinois. Indeed, the *only* substantive change made in the committee report, after the General Assembly had refused to approve it, was to delete the statement that trusts were *taxable* and to substitute therefor the statement that trusts for natural persons were *exempt*.

Obviously there could have been no clearer showing of both legislative intent in proposing, and of voter understanding in adopting, Article IX-A. Both the intent and the understanding were that trusts for the benefit of natural persons were to be exempt from personal property taxation under Article IX-A.

The intended effect of Article IX-A was as evident to public officials of the State of Illinois as it was to Petitioner. Two written opinions by the Attorney General of Illinois (Appendix p. A47 and p. A49) and a written opinion by the then acting State's Attorney of Cook County (Appendix p. A51), each stated that personal property held in trust for the benefit of natural persons was exempt under Article IX-A. Affidavits of the leadership of the Seventy-Sixth General Assembly (Appendix pp. A53-A60), which proposed Article IX-A, were attached to the Petitioner's Complaint, and specifically attested to the fact that it was the intent of the Illinois General Assembly to exempt trusts for natural persons from personal property taxation. The Attorney General has again

reiterated this position in the case at bar, by filing, as amicus curiae, a Petition in the Supreme Court of Illinois requesting it to grant a rehearing and to hold trusts for the benefit of natural persons exempt from personal property taxation.

Under these circumstances, the question presented is whether it was arbitrary and capricious for the Illinois Supreme Court to ignore the clear intent of the Legislature and the understanding of the voters that trusts were exempted. This intent was clear to the Illinois public officials, legislators and voters. The Fourteenth Amendment to the Constitution of the United States protects United States citizens from arbitrary and capricious state action, whether that action be that of executive, legislative or judicial departments of state government. This Court has held that unwarranted and totally unanticipated construction of valid state enactments by state courts, applied retroactively, deprives citizens of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

In *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673 (1930), for example, this Court held that a decision of the Supreme Court of Missouri construing a valid state enactment deprived the plaintiff of due process of law. After noting that if the plaintiff's due process rights had been violated by an exercise of the state's legislative power the transgression would be obvious, this Court held that the same principles were applicable to acts of the judiciary:

> *"The violation is none the less clear when that result is accomplished by the state judiciary in the course of construing an otherwise valid (First Nat. Bank* v. *Weld County, 264 U. S. 450, 68 L.Ed. 784, 44 Sup.Ct.Rep. 385) state statute. The federal guaranty of due process extends to state action through its judicial, as well as through its legislative, executive, or administrative, branch of government."* (281 U. S. 673, 680.)

And in *Bouie* v. *Columbia*, 378 U. S. 347 (1964), this Court held that the construction of a criminal statute by the Supreme Court of South Carolina deprived the defendants of the due process of law guaranteed by the Fourteenth Amendment. In *Bouie*, a state statute prohibiting *"entry upon the lands of another. . . . after notice from the owner or tenant prohibiting such entry. . . ."* was construed to encompass the act of remaining on the premises of another after receiving notice to leave. This Court reversed:

> "When a statute on its face is narrow and precise, however, it lulls the potential defendant into a false sense of security, giving him no reason even to suspect that conduct clearly outside the scope of the statute as written will be retroactively brought within it by an act of judicial construction. If the Fourteenth Amendment is violated when a person is required 'to speculate as to the meaning of penal statutes,' as in *Lanzetta*, or to 'guess at (the statute's) meaning and differ as to its application' as in *Connally*, the violation is that much greater when, because the uncertainty as to the statute's meaning is itself not revealed until the court's decision, a person is not even afforded an opportunity to engage in such speculation before committing the act in question.
>
> "There can be no doubt that a deprivation of the right of fair warning can result not only from vague statutory language but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language." (379 U. S. 347 at 352.)

The same situation prevails in the instant case. When the Petitioner created an irrevocable trust for her adult son and daughter on December 23, 1970, she had previously been expressly advised in the Official Pamphlet (Appendix pp. A39 at A42) that personal property *"which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes"* under proposed Article IX-A. As a result of the Illinois Supreme Court's decision the property of the Petitioner, and the property of all settlors and natural persons who are

beneficiaries of trusts in Illinois, has been taken without due process of law.

II. THE SUPREME COURT OF ILLINOIS, IN GIVING DETERMINATIVE EFFECT TO LEGISLATIVE ACTIVITY CARRIED OUT SUBSEQUENT TO, AND IN DEROGATION OF, RIGHTS INTENDED TO BE GRANTED BY AN AMENDMENT TO THE ILLINOIS CONSTITUTION, HAS IMPAIRED THE OBLIGATION OF CONTRACT IN VIOLATION OF SECTION 10 OF ARTICLE I OF THE CONSTITUTION OF THE UNITED STATES.

The Illinois Supreme Court, in holding that trusts for the benefit of natural persons were not exempt from personal property taxation under Article IX–A, did so in reliance upon a resolution adopted by the Illinois General Assembly subsequent to the approval of the statutorily required report of the proposed amendment mailed to the voters. In so doing, the decision of the Court has raised the question of whether such subsequent legislative action has impaired the obligation of contracts in violation of Section 10 of Article I of the Constitution of the United States.

The Official pamphlet report of the Illinois General Assembly containing the statutorily required explanation of Article IX–A, and the arguments for and against the adoption of Article IX-A, which contained the express statement that personal property *"which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes"* was unanimously approved by the Illinois House of Representatives on May 6, 1970 (Appendix p. .....) and by the Illinois Senate on May 7, 1970 (Appendix p. .....). It was this pamphlet which was mailed to the Illinois electorate.

Subsequently, the Illinois General Assembly adopted Senate Joint Resolution No. 67. In that resolution it was stated that by the use of the phrase "*as to individuals*" in the proposed amendment the Illinois General Assembly "*intended to mean a*

natural person, or two or more natural persons as joint tenants or tenants in common". This resolution to which the Illinois Supreme Court gave decisive effect in reaching its decision in this case was adopted by the Illinois Senate on May 19, 1970 (Appendix p. A44) and by the Illinois House on May 29, 1970 (Appendix p. A45). Resolution No. 67 was never adopted by the Illinois General Assembly in accordance with the Illinois constitutional and statutory requirements concerning the manner of submitting constitutional amendments to the Illinois electorate. (First, the resolution did not receive a simple majority of the members of the House, having received a total of 84 aye votes (Appendix pp. A45-A46), some five votes less than the simple majority required by the House to enact a Bill into law; and second, the Resolution was not accompanied by an explanation, arguments and the form of the ballot). Further Senate Joint Resolution No. 67 was never mailed to, or otherwise, in any manner, disseminated to, the Illinois electorate prior to their ratification of Article IX–A.

There can be no doubt but that had the Illinois General Assembly adopted Senate Joint Resolution No. 67 *subsequent to* December 23, 1970, when Petitioner created her trust, there would have been a classic issue of whether the state by subsequent legislative action had impaired the obligation of contract in violation of Section 10 of Article I of the Constitution of the United States. We respectfully submit that a clear cut issue remains where the subsequent legislative action relied upon by the Illinois Supreme Court was never made known to Petitioner or to the Illinois electorate. To hold otherwise would be to permit citizens to be charged, as a matter of law, with knowledge of legislative action shown only on the official journals of state legislatures but not communicated or otherwise made known to its citizens.

In 16 Am. Jur. 2d, Constitutional Law, § 452 at page 801 it is stated:

> "* * *, constitutional protection exists as against a judicial decision which so construes a state constitution or statute that the constitution or statute effects an impairment of contract obligations."

This Court has held that trusts for the benefit of natural persons "*are contracts within the meaning of the contract clause of the Federal Constitution*". (See *Coolidge* v. *Long*, 282 U. S. 582, 595 (1931.)

This Court has also stated that when a "*state court, either expressly or by necessary implication, gives effect to a subsequent law of the state whereby the obligation of the contract is alleged to be impaired a Federal question is presented*" and it becomes the duty of this Court "*to take jurisdiction and to determine the existence and validity of the contract, what obligations arose from it, and whether they are impaired by the subsequent law.*" *Cross Lake Shooting and Fishing Club* v. *State of Louisiana*, 224 U. S. 632, 639 (1912). In *Columbia Railway, Gas & E. Co.* v. *South Carolina*, 261 U. S. 236, 244, 245 (1923), this Court held that a contract was impaired by a statute as applied by the state court, stating:

> "As this court has repeatedly ruled, the Constitution affords no protection as against an impairment by judicial decision. * * * But, although the state court may have construed the contract and placed its decision distinctly upon its own construction, if it appear, upon examination, that, in real substance and effect, force has been given to the statute complained of, our jurisdiction attaches."

The Illinois Supreme Court, in the instant case and in two prior decisions, has held that trusts for the benefit of natural persons are not exempt under Article IX-A and, in so doing, has relied on the subsequent Senate Joint Resolution No. 67 (Appendix pp. A44-A45) and has refused to give effect to the prior legislative report (Official Pamphlet—Appendix p. A39) of the Illinois General Assembly which specifically stated that trusts for the benefit of natural persons are exempt under Article IX-A.

In the original *Lake Shore Auto Parts Co.* v. *Korzen* case, 49 Ill. 2d 137, at 148, the Illinois Supreme Court concluded, in the language of the Senate Joint Resolution No. 67,

> "that the meaning of Article IX-A is that ad valorem taxation of personal property owned by a natural person or by two or more natural persons as joint tenants or tenants in common is prohibited."

In the Illinois Supreme Court's Supplemental Opinion on remand from the United States Supreme Court, in *Lake Shore Auto Parts Co.* v. *Korzen*, 54 Ill. 2d 237, 238, it continued to adhere to the foregoing construction of Article IX-A.

The Illinois Supreme Court's continued reliance on Senate Joint Resolution No. 67, and its refusal to give effect to the Illinois General Assembly's clear statement of exemption in the Official Pamphlet, was manifested a third time in *Hanley* v. *Kusper*, 61 Ill. 2d 452, wherein the Court stated at pages 460 and 461:

> "That explanation of the resolution is inadequate, it ignores the emphasis that was placed upon ownership by a natural person, or two or more natural persons as joint tenants or tenants in common."

The Supreme Court of Illinois, in the instant case, continues to persist in its reliance on Senate Joint Resolution No. 67 in interpreting Article IX-A by continuing to adhere to its prior opinions. (*American National Bank and Trust Company of Chicago* v. *Kusper*, 69 Ill. 2d 374—See Appendix pp. A1-A17 at pp. A16 and A17). In rejecting the prior legislative action set forth in the Official Pamphlet mailed to the electorate, stating that trusts for natural persons were exempt from taxation, and in relying upon the subsequent Senate Joint Resolution No. 67 (Appendix pp. A44-A45), the Illinois Supreme Court has given Senate Joint Resolution No. 67 the effect of law in construing Article IX-A.

This Court has stated that "*the jurisdiction of this Court does not depend upon the form in which the legislative action is expressed, but rather upon its practical effect and opera-*

tion as construed and applied by the state court of last resort, and this irrespective of the process of reasoning by which the decision is reached, or the precise extent to which reliance is placed upon the subsequent legislation." Detroit United Railway v. *Michigan*, 242 U. S. 239, 247 (1916).

The fact, therefore, that the subsequent legislative action of the Illinois General Assembly was in the form of the adoption of a resolution, does not prevent the federal question of impairment of contracts from arising. This Court has many times noted that if the United States Supreme Court were bound by decisions of state courts of last resort in construing rights acquired under contracts alleged to have been impaired by subsequent legislation, there would never be a case involving impairment of contracts which could be presented to this Court.

In *Terre Haute & Indianapolis Railroad Company* v. *State of Indiana*, 194 U. S. 579 (1904), this Court had occasion to note under similar circumstances that a State Court, while claiming that it was using a subsequent legislative enactment only for the purpose of construing a prior enactment, was in fact giving effect to the subsequent enactment and thereby impaired the obligation of contract.

In determining whether contract rights have been impaired, the law in existence at the time the contract was entered into is alone to be considered, and the subsequent legislation is to be considered only to determine if thereby, here has been an impairment of the obligation of contract.

Under the law in existence on the date Petitioner created her trust for her son and daughter, trusts for natural persons were exempt from personal property taxation under Article IX-A. On April 25, 1973, when the Supreme Court of Illinois held, in *Lake Shore Auto Parts Co.* v. *Karzen*, 54 Ill. 2d 237, that trusts for natural persons were not exempt from personal property taxation and gave decisive effect to Senate Joint Resolution No. 67 in arriving at such an interpretation of Article IX-A, we respectfully submit that the subsequent Senate Joint Resolution No. 67 impaired the obligation of contract.

CONCLUSION.

For the foregoing reasons, it is respectfully requested that this Court grant this Petition and review the decision of the Supreme Court of Illinois on writ of certiorari.

Respectfully submitted,

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MICHAEL RODAK, JR., CLERK

APPENDIX.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1637

R. B. ROBINSON, INDIVIDUALLY AND AS NEXT OF FRIEND OF C. K. ROBINSON, A MINOR; AND IN A REPRESENTATIVE CAPACITY ON BEHALF OF ALL SETTLORS AND NATURAL PERSON BENEFICIARIES OF TRUSTS,

Petitioner,

vs.

STANLEY T. KUSPER, COUNTY CLERK OF THE COUNTY OF COOK, ET AL.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No.

R. B. ROBINSON, INDIVIDUALLY AND AS NEXT OF FRIEND OF C. K. ROBINSON, A MINOR; AND IN A REPRESENTATIVE CAPACITY ON BEHALF OF ALL SETTLORS AND NATURAL PERSON BENEFICIARIES OF TRUSTS,

Petitioner.

vs.

STANLEY T. KUSPER, COUNTY CLERK OF THE COUNTY OF COOK, ET AL.

Respondents.

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DECISION OF THE ILLINOIS SUPREME COURT, CONSTITUTIONAL STATUTORY AND LEGISLATIVE ACTION INVOLVED.

Opinion of the Illinois Supreme Court, which is the subject of this Appeal, as reported in the Illinois Supreme and Appellate Courts Combined Advance Sheets—February 22, 1978—No. 4 (69 Ill. 2d 374), reads as follows:

(Nos. 49266-67 cons.—Judgments affirmed.)

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO *et al.*, Appellants, v. STANLEY T. KUSPER County Clerk, *et al.*, Appellees, R. B. ROBINSON, Appellant, v. STANLEY T. KUSPER, County Clerk, *et al.*, Appellees.

Opinion filed Nov. 30, 1977.—Rehearing denied Jan. 26, 1978.

1. TAXES—*the 1970 Constitution mandates the legislative abolition of all ad valorem personal property taxes by January 1, 1979.* Section 5(c) of article IX of the 1970 Constitution is a mandate to the General Assembly to abolish all *ad valorem* taxes on personal property on or before January 1, 1979, and legislation is contemplated and necessary to carry such abolition into effect. (P. 383.)

2. TAXES—*the 1970 Constitution does not require the legislature to abolish all ad valorem personal proper taxes simultaneously.* The mandate of the 1970 Constitution that the General Assembly must abolish all *ad valorem* personal property taxes by January 1, 1979 (Ill. Const. 1970, art. IX, sec. 5(c)), does not require that all such taxes be abolished at the same time. (P. 383.)

3. TAXES—*the legislature is required to replace abolished ad valorem personal property taxes with other taxes that fall upon the same classes of taxpayers.* When abolishing *ad valorem* personal property taxes as required by section 5(c) of article IX of the 1970 Constitution, the General Assembly must concurrently replace all revenue lost by units of local government and school districts by imposing statewide taxes solely on these classes relieved of the burden of the taxes abolished, and this constitutional requirement is not self-executing, but requires legislation to carry it into effect. (Pp. 383-84.)

4. TAXES—*the constitutional requirement that the abolition of an ad valorem personal property tax must be accompanied by a replacement tax is not limited to taxes on business entities.* The 1970 Constitution requires the legislature to abolish all *ad valorem* personal property taxes by January 1, 1979, and provides that the resulting revenue losses of units of local government and school districts must be replaced by other statewide taxes imposed solely on those classes relieved of the burden of the taxes abolished (Ill. Const. 1970, art. IX, sec. 5(c)), and these replacement-tax provisions are not intended to apply only to taxes on business entities, since section 5(c) contains no such restrictive language and there is no justification for so construing it. (P. 385.)

5. TAXES—*lack of statewide uniformity in the assessment of ad valorem taxes on personal property held in trust for natural persons does not negate the constitutional requirement that when such taxes are abolished, replacement taxes must be enacted.* Section 5(c) of article IX of the 1970 Constitution requires the enactment of concurrent replacement taxes when *ad valorem* personal property taxes are abolished, and the fact that *ad valorem* taxes on personal property held in trust for a natural person are being assessed only in seven counties of this State and not assessed in 95 others does not alter or limit the General Assembly's obligation to enact a replacement tax affecting all trusts on a statewide basis once it has enacted a statute exempting from

ad valorem personal property taxes "[a]ll personal property held by a trustee, guardian, conservator, executor, administrator or other fiduciary to the extent held for the exclusive benefit of a natural person" (Ill. Rev. Stat. 1975, ch. 120, pars. 500, 500.21b). (P. 385.)

6. TAXES—*the statute exempting from personal property taxation property held by a trustee for the benefit of a natural person is unconstitutional due to the legislature's failure to enact a replacement tax.* Section 5(c) of article IX of the 1970 Constitution requires the General Assembly to abolish all *ad valorem* personal property taxes on or before January 1, 1979, and requires the legislature to concurrently replace the resulting revenue losses of local governments and school districts with other statewide taxes imposed solely on those classes relieved of the burden of the taxes abolished, and Public Act 78-1250 (Ill. Rev. Stat. 1975, ch. 120, par. 500.21b), exempting from *ad valorem* taxation all personal property held by a trustee for the exclusive benefit of a natural person is unconstitutional due to the fact that the General Assembly failed to enact a proper concurrent replacement tax. (P. 386.)

7. TAXES—*an ad valorem tax on personal property held in a testamentary or inter vivos trust for a natural person is not a tax abolished under the 1870 Constitution.* The 1970 amendment to the 1870 Constitution providing that "taxation of personal property by valuation is prohibited as to individuals" (Ill. Const. 1870, art. IX-A) does not apply to property held in an *inter vivos* or testamentary trust for the benefit of a natural person, and consequently it cannot be said that the 1970 Constitution's prohibition against reinstatement of any *ad valorem* personal property tax abolished on or before the effective date of that constitution prohibits the assessment of *ad valorem* taxes against property held in such a trust. *Hanley* v. *Kusper* (1975), 61 Ill. 2d 452, followed. (Pp. 386-90.)

8. TAXES—*a ruling by the Director of the Department of Local Government Affairs that is inconsistent with law is not*

binding on local taxing officials. Section 130(3) of the Revenue Act of 1939 (Ill. Rev. Stat. 1975, ch. 120, par. 611(3)) provides that the Department of Local Government Affairs shall "prescribe general rules and regulations, not inconsistent with law, * * * which * * * shall be binding upon all local assessment officers and shall be obeyed by them respectively until reversed, annulled or modified by a court of competent jurisdiction," and a ruling issued by the director of that department that is inconsistent with the law is not binding upon local taxing officials. (P. 391.)

Appeal from the Circuit Court of Cook County, the Hon. F. Emmett Morrissey, Judge, presiding.

Concannon, Dillon, Snook & Morton, of Chicago (William R. Dillon and John B. Dillon, of counsel) and O'Keefe, Ashenden & Lyons (Thomas G. Lyons, of counsel), for appellants.

Bernard Carey, State's Attorney, of Chicago (Paul P. Beibel, Jr., Deputy State's Attorney, and Lawrence Halperin, Assistant State's Attorney, of counsel), for appellees.

Sidley & Austin, of Chicago (William H. Avery and J. Robert Barr, of counsel), for *amicus curiae* League of Women Voters of Illinois.

William J. Scott, Attorney General, of Springfield (Imelda R. Terrazino, of Chicago, of counsel), *amicus curiae.*

Pope & Driemeyer, of Belleville (Joseph R. Lowery, of counsel), for *amicus curiae* Southern Illinois Corporate Fiduciaries Association.

MR. JUSTICE UNDERWOOD delivered the opinion of the court:

The plaintiffs in these consolidated causes filed class actions in the circuit court of Cook County seeking, *inter alia,* a declaratory judgment that Public Act 78–1250 (Ill. Rev. Stat. 1975, ch. 120, par. 500.21b) is a valid legislative enactment exempting from personal property taxation for 1975 and subsequent years all personal property held by a trustee for the exclusive benefit of a natural person. The trial court dismissed certain counts of each complaint on the grounds that Public Act 78–1250 was unconstitutional because of the failure of the General Assembly to enact a concurrent replacement tax as required by section 5(c) of article IX of the 1970 Constitution of the State of Illinois and that this court's decision in *Hanley* v. *Kusper* (1975), 61 Ill. 2d 452, was *res judicata* as to other relief sought. Plaintiffs have appealed directly to this court pursuant to Supreme Court Rule 302(a)(1). 58 Ill. 2d R. 302(a)(1).

Public Act 78–1250, which became effective September 10, 1974, added section 19.21b to the Revenue Act of 1939 (Ill. Rev. Stat. 1975, ch. 120, par. 500.21b). The statute, as so amended, provides in pertinent part:

> "Sec. 19. All property described in Sections 19.1 through 19.24 to the extent therein limited, is exempt from taxation. * * *
>
> * * * * *
>
> Sec. 19.21b. All personal property held by a trustee, guardian, conservator, executor, administrator or other fiduciary to the extent held for the exclusive benefit of a natural person."

The principal issue is whether the failure of the General Assembly to concurrently enact a replacement tax renders this exemption unconstitutional as violative of section 5(c) of article IX of the 1970 Illinois Constitution, which provides:

> "On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenue lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. Such revenue shall be replaced by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those classes relieved of the burden of paying ad valorem personal

property taxes because of the abolition of such taxes subsequent to January 2, 1971. If any taxes imposed for such replacement purposes are taxes on or measured by income, such replacement taxes shall not be considered for purposes of the limitations of one tax and the ratio of 8 to 5 set forth in Section 3(a) of this Article."

The complaint in cause No. 49266 was filed by seven banks and trust companies against certain taxing officials in Cook County who were responsible for the assessment and collection of personal property taxes in that county. The action was designated as a class action brought by plaintiffs on behalf of themselves and other trustees of "traditional forms of trusts" created by wills and other written instruments for the purpose of holding, conserving and managing trust assets for the benefit of natural persons and also as representatives of the beneficiaries of said trusts. Count I of plaintiffs' second amended complaint included allegations that when the General Assembly enacted Public Act 78–1250, its members were of the opinion that it was not necessary to concurrently enact a replacement tax for the reason that there had been no loss of revenue to school districts and units of local governnment in 95 counties which had never assessed trusts for the benefit of natural persons; that the fiduciary class on which a replacement tax would fall could not be delineated, since many trusts for natural persons held assets exempt from personal property taxation under section 21(4) of the Revenue Act of 1939 (Ill. Rev. Stat. 1975, ch. 120, par. 502(4)), which exempts from personal property taxation the shares of capital stock of corporations whose tangible personal property or capital stock is assessed in Illinois; that because of changes in investments, trusts frequently shift from a taxable to a nontaxable status; and that the heaviest burden of a replacement tax would fall on trusts which had not previously been taxed by reason of the exemption contained in section 21(4) of the Revenue Act. Count I further alleged that the exemption contained in section 21(4) of the Revenue Act was

preserved by section 5(b) of article IX of the 1970 Illinois Constitution, which provides that "[a]ny ad valorem personal property tax abolished on or before the effective date of this Constitution shall not be reinstated"; and that if the General Assembly had enacted a replacement tax on trusts for the benefit of natural persons, such replacement tax would have constituted the reimposition of a tax abolished prior to the adoption of the 1970 Constitution contrary to the express provisions of section 5(b) of article IX thereof. It was further alleged that by letter dated October 14, 1975, the Director of the Department of Local Government Affairs had ruled that personal property held in trust for the benefit of natural persons was not to be assessed for 1975 and that such ruling was binding on Cook County taxing officials by reason of section 130(3) of the Revenue Act (Ill. Rev. Stat. 1975, ch. 120, par. 611(3)), which provides in pertinent part that the Department of Local Government Affairs shall "prescribe general rules and regulations, not inconsistent with law, * * * which * * * shall be binding upon all local assessment officers and shall be obeyed by them respectively until reversed, annulled or modified by a court of competent jurisdiction"; and that contrary to such ruling the defendants had assessed and had attempted to collect *ad valorem* taxes on personal property held by plaintiffs on April 1, 1975, as trustees for the exclusive benefit of natural persons. Plaintiffs prayed that section 19.21b of the Revenue Act be held to exempt from *ad valorem* taxation personal property held by a trustee for the exclusive benefit of a natural person and that the ruling of the Director of the Department of Local Government Affairs not to assess personal property held in trust for the benefit of natural persons be held to be binding on the defendant county taxing officials.

Count II similarly alleged that certain trusts held only shares of stock of companies whose tangible personal property or capital stock had been assessed under the Revenue Act and were therefore exempt from personal property taxation under section

21(4) of that act; that Public Act 78–1250 was valid and constitutional without the concurrent enactment of a replacement tax; that if a replacement tax were enacted with respect to such trusts whose only assets were tax exempt under section 21(4) of the Revenue Act, it would constitute the reimposition, under the guise of a replacement tax, of a tax abolished prior to the adoption of the 1970 Constitution in violation of section 5(b) of article IX thereof. Plaintiffs prayed in count II that section 19.21(b) of the Revenue Act be held constitutional.

Count III sought a declaration that nine specific testamentary and *inter vivos* trusts were exempt from personal property taxation under the authority of this court's decision in *Hanley* v. *Kusper* (1975), 61 Ill. 2d 452, due to the fact that the trust imposed involuntary fiduciary relationships under which the beneficiaries were prevented from exercising property rights generally available to other natural persons or under which the beneficiaries, by reason of age or mental or physical incapacity or disability, were unable to exercise such property rights.

Cause No. 49267 is a class action for declaratory judgment brought against the same Cook County taxing officials by plaintiff, R. B. Robinson, on her own behalf and on behalf of the settlors of all irrevocable and revocable trusts created for the benefit of natural persons and on behalf of the beneficiaries of such trusts. Count II of plaintiff's second amended complaint, which is the only count with which we are concerned on this appeal, alleged that plaintiff was the settlor of an irrevocable trust for her son and daughter; that she was a registered voter and had voted at the general election held November 3, 1970, in favor of the proposition to add article IX-A to the 1870 Illinois Constitution, which provided: "Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals*"; that prior to voting on said proposition, she had read in full the pamphlet mailed to the electorate pursuant to law and was led to believe that the proposition would exempt from taxation all personal

property held in a fiduciary capacity for the benefit of natural persons; that she further believed in subsequently voting favorably on the 1970 Illinois Constitution that section 5(b) of article IX thereof would prohibit the reinstatement of such previously abolished *ad valorem* tax on personal property held in trust for the benefit of natural persons; that in reliance thereon and in the belief that property held in trust for the benefit of natural persons was exempt from personal property taxation, she created an irrevocable trust with herself as settlor for the benefit of her son and daughter on December 23, 1970; that Public Act 78–1250 adding section 19.21b to the Revenue Act exempted from personal property taxation for 1975 and subsequent years all personal property held by a trustee for the exclusive benefit of a natural person; that notwithstanding the foregoing and notwithstanding the ruling of the Director of the Department of Local Government Affairs dated October 14, 1975, not to assess trusts for the benefit of natural persons, the defendant taxing officials had continued to assess and collect taxes on the personal property held in said irrevocable trust for the benefit of her son and daughter for 1975 and prior years; and that unless article IX–A of the 1870 Illinois Constitution was construed to exempt personal property held in trust for natural persons from *ad valorem* taxation, her right to vote and that of other members of the class she represented would have been unconstitutionally abridged. Various affidavits of members of the General Assembly as to their intent in proposing the addition of article IX–A to the 1870 Constitution were attached to the complaint. Plaintiff prayed that article IX–A of the 1870 Constitution be construed to exempt personal property owned by or held in a fiduciary capacity for the benefit of natural persons from *ad valorem* taxation and that section 19.21b of the Revenue Act be held to exempt from taxation all personal property held by a trustee for the exclusive benefit of a natural person.

The two causes were consolidated for hearing in the trial court. In each cause the defendants filed motions to dismiss the

complaints for failure to state a cause of action. In No. 49266, the trial court granted the motion to dismiss count I of plaintiffs' second amended complaint on the ground that Public Act 78–1250 was unconstitutional for failure of the General Assembly to concurrently enact a replacement tax as required by section 5(c) of article IX of the 1970 Constitution and on the further ground that the memorandum of the Director of the Department of Local Government Affairs dated October 14, 1975, was null and void and not binding on defendants. The motion to dismiss was sustained as to counts II and III on the grounds that the decision of this court in *Hanley* v. *Kusper* (1975), 61 Ill. 2d 452, was *res judicata*. In No. 49267, the trial court apparently granted some form of relief as to count I, the circumstances of which are not entirely clear. No appeal was taken therefrom, and count I is not involved here. The motion to dismiss count II of plaintiffs' second amended complaint was sustained on all three of the foregoing grounds.

We turn first to the questions raised concerning the constitutionality of Public Act 78–1250. In our opinion, *Elk Grove Engineering Co.* v. *Korzen* (1973), 55 Ill. 2d 393, is directly in point and is controlling. In that case, the General Assembly passed a law exempting from *ad valorem* taxation all tangible personal property used by the owner exclusively in cultivating, operating or managing a farm or in the business of farming. No concurrent replacement tax was enacted. Upon examination of the provisions of section 5(c) of article IX of the 1970 Constitution and the relevant debates and proceedings of the 1970 constitutional convention relative thereto, we concluded that the provisions of section 5(c) constitute a mandate to the General Assembly to abolish all *ad valorem* taxes on personal property on or before January 1, 1979; that legislation is contemplated and necessary to carry such abolition into effect; that while the Constitution does not require that all such taxes be abolished at the same time, the General Assembly is nevertheless under a continuing duty to effect such abolition by the specified date;

that when abolishing *ad valorem* personal property taxes, the General Assembly must concurrently replace all revenue lost by units of local government and school districts by imposing statewide taxes solely on those classes relieved of the burden of the taxes abolished; and that this latter provision is not self-executing but requires legislation to carry it into effect. We accordingly held that the statute there in question purporting to exempt personal property used in farming from personal property taxation was unconstitutional, since the General Assembly had not imposed a replacement tax as required by section 5(c).

Plaintiffs attempt to distinguish *Elk Grove* on the grounds that in that case the General Assembly was dealing with a class of taxpayers engaged in the "business" of farming where each member of the class owned tangible personal property; where all 102 counties of the State uniformly assessed and collected personal property taxes from those engaged in such business; and where the abolition of such taxes represented an actual loss of revenue to units of local government and school districts in all 102 counties of the State. They urge that the case at bar differs from *Elk Grove* in that Public Act 78–1250 deals with non-business taxpayers, some of which are not subject to personal property taxes by reason of the exemptions contained in section 21(4) of the Revenue Act; in that only 7 of the 102 counties in the State assess and collect *ad valorem* taxes on personal property held in trust; and because the abolition of such taxes therefore does not cause any lost revenue in 95 counties. They urge that a statewide replacement tax could not be imposed on all trusts, because to do so as to trusts holding previously exempt property would constitute the reinstatement of a previously abolished tax in violation of section 5(b) of article IX of the 1970 Constitution. They also suggest, as alleged in the complaint, that by reason of the exemptions contained in section 21(4) of the Revenue Act and the fact that trusts are not currently being taxed in 95 counties, any replacement tax imposed on trusts would necessarily cast the heaviest burden on trusts

not previously taxed and that for these and other reasons the General Assembly was unable to determine how to enact a replacement tax and indeed thought it unnecessary to do so. They argue that as a consequence of the foregoing factors, the provisions of section 5(c) as applied to traditional trusts are vague, indefinite and uncertain and therefore violative of the due process and equal protection clauses of the Federal and State constitutions.

We find these arguments to be without merit. At the outset, we cannot concur with the suggestion that the replacement tax provisions of section 5(c) were intended to apply only to business entities. The provision contains no such restrictive language, and we find no justification for so construing it. Furthermore, the fact that *ad valorem* taxes on personal property held by trusts are being assessed in only seven counties of the State does not, in our opinion, alter or limit the General Assembly's obligation to enact a replacement tax affecting all trusts on a statewide basis. The fact is that nonexempt personal property held by trustees is subject to *ad valorem* taxation in all counties of the State. All trusts are to that extent subject to the burden of such taxes, and the school districts and units of local government in those counties will lose potential revenues to the extent those taxes are abolished. Upon abolition of such taxes, we can see no constitutional prohibition against imposing a replacement tax on all trusts thus relieved of the burden, including those which were previously subject to the tax but which were not taxed due to the failure of local taxing officials to assess nonexempt property held by trustees. Also, the fact that some trusts hold property previously exempt from *ad valorem* personal property taxation and the fact that trust assets change from time to time does not, in our view, render the imposition of a statewide replacement tax totally impossible as suggested by the plaintiffs. It is neither necessary nor appropriate in this case to decide the question of the extent to which a replacement tax may be imposed on trusts which hold assets which were previously exempt from personal

property taxation. For this reason, we cannot agree with the argument that any replacement tax must necessarily fall heaviest on those trusts previously exempt from tax. We must furthermore disagree with the contention that the provisions of section 5(c) as applied to traditional trusts are unconstitutionally vague, indefinite and uncertain. In our opinion, the *Elk Grove* decision is determinative, and we accordingly find that the trial court in both cases correctly held Public Act 78–1250 to be unconstitutional for failure of the General Assembly to concurrently enact a replacement tax as required by section 5(c) of article 1X of the 1970 Constitution.

The other allegations of the complaints filed by the plaintiffs in each of these causes involve article 1X–A of the 1870 Constitution, which was approved by the voters on November 3, 1970, and which provides: "Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals*." The scope of that provision is still pertinent under the 1970 Constitution by virtue of section 5(b) of article IX, which prohibits the reinstatement of any *ad valorem* personal property tax abolished on or before the effective date of the 1970 Constitution and section 5(c) of that article, which, as previously discussed, requires the imposition of a replacement tax for personal property tax abolished after January 2, 1971.

The appeals now before us mark the third occasion on which we have been asked to construe article IX–A of the 1870 Constitution as applied to fiduciaries. In *Lake Shore Auto Parts Co.* v. *Korzen* (1971), 49 Ill. 2d 137, we concluded that, by use of the phrase "as to individuals," the General Assembly intended to abolish the *ad valorem* taxation of personal property owned by a natural person, or two or more natural persons as joint tenants or tenants in common. We further held that the article, as so interpreted, violated the equal protection clause of the fourteenth amendment of the Federal Constitution. The Supreme Court of the United States granted *certiorari* and reversed and remanded,

holding that there was no constitutional infirmity in the article. (410 U. S. 356, 35 L. Ed. 2d 351, 93 S. Ct. 1001.) On remand, we considered memoranda filed by the parties and by the Corporate Fiduciaries Association of Illinois urging particular interpretations of article IX–A. In response thereto, this court stated:

> "The personal property thus left subject to taxation under article IX–A includes the following categories of ownership: partnerships, limited partnerships, joint ventures, professional associations, and professional service corporations. Trustees and other fiduciaries, whether corporate or not, do not own property as natural persons, and they were not exempted from taxation by article IX–A." 54 Ill. 2d 237, 239.

Mr. Justice Goldenhersh dissented from that portion of the opinion relating to trustees and other fiduciaries. In *Hanley* v. *Kusper* (1975), 61 Ill. 2d 452, this court was asked to reconsider our prior decisions in the *Lake Shore* cases. We note that six of the seven plaintiffs in cause No. 49266 now before us were also plaintiffs in *Hanley* and were also designated as members of the Corporate Fiduciaries Association of Illinois in the *amicus curiae* brief filed in the *Lake Shore* case. In *Hanley*, the plaintiffs urged that article IX–A should be interpreted to exempt from taxation personal property held by trustees and other fiduciaries for the benefit of natural persons. After extensive review of various interpretive materials, including the legislative history as reflected by Senate and House journals, the pamphlet provided to voters describing the proposed article with arguments for and against it, and the "Explanation of Amendment" which was printed on the ballot, we reached the following conclusions:

> "For the reasons stated, we have again rejected the claim that all personal property held in trust for natural persons is exempt from taxation. Nevertheless, the arguments of the plaintiffs and our review of the interpretive materials and the underlying policy considerations have persuaded us that there are some situations in which property held by fiduciaries can fairly be said to have been intended to be

exempted from taxation. Such situations are those in which the natural person who owns the property is prevented by law from dealing with it as a natural person.

When, for example, the ownership of a natural person is terminated by death, the law imposes an involuntary fiduciary relationship during the period of administration. Similarly, the legal inability of an incompetent to manage and dispose of his property requires the appointment of a conservator. A minor's legal disability presents a closer case, for property may be held by a minor in his own name. Nevertheless, the inability of a minor to deal fully and freely with property held in his own name often compels the establishment of a guardianship or custodianship for the minor's property. [Citation.] In each of these situations the fiduciary relationship comes into being because the law prevents a particular class of natural persons (heirs or legatees of decedents, incompetents or minors) from exercising property rights that are available generally to other natural persons. These situations, in our opinion, are distinguishable from voluntary fiduciary relationships created to accomplish results that could not be achieved so long as the property is owned by a natural person. To the extent thus indicated, our decision in *Lake Shore Auto Parts Co.* v. *Korzen*, 54 Ill. 2d 237 (1973), is overruled." 61 Ill. 2d 452, 463.

Although their approach is somewhat different, the plaintiffs in these consolidated appeals are again asking for a reconsideration of the conclusions reached in the *Lake Shore* and *Hanley* cases with respect to the taxability of personal property held by a fiduciary. In No. 49266, the plaintiffs seek a declaratory judgment that nine specific trusts are exempt from personal property taxation under article IX–A of the 1870 Constitution. We consider it unnecessary to describe each of the trusts in detail. It suffices to note that they were either testamentary trusts or *inter vivos* revocable or irrevocable trusts created by a settlor for the benefit of himself and others. Plaintiffs point out that in *Hanley*, it was indicated that personal property held in a decedent's estate during the period of administration would not be subject

to personal property taxation, since the decedent's ownership of such property had been terminated by death and the law imposed an involuntary fiduciary relationship during the period of administration. They argue that under the rationale of the *Hanley* decision, all testamentary trusts should also be exempt from personal property taxation since they come into existence by the involuntary act of the death of the testator, and the beneficiaries of such trusts are as much prevented by law from dealing with the assets of the trust as a natural person during the period of the administration of the trusts as they are during the period of administration of the decedent's estate. Likewise, they argue that trusts in which a minor or incompetent becomes a beneficiary after creation of the trust should also be considered exempt in view of the legal inability on the part of the beneficiary to deal with the property as a natural person. We find no merit in these and the other related arguments advanced by plaintiffs in this regard. While a decedent has little or no choice with respect to the creation of a fiduciary relationship during the period of administration of his estate with respect to property owned by him at his death, a testator most definitely can determine whether such assets are thereafter to be left outright to the objects of his bounty or to be held in trust for such beneficiaries. It is apparent that each of the trusts set forth in the complaint are voluntary fiduciary relationships created by a settlor or testator to accomplish results that could not be achieved if the property was owned by a natural person. None of the trusts involved situations where property held in the name of a natural person was subjected to an involuntary fiduciary relationship on account of that person's minority, incompetency or death which rendered him unable to deal with his property as a natural person. The *Hanley* decision is dispositive of the issues raised in count III of plaintiffs' complaint in No. 49266, and we conclude that the trial court correctly allowed the defendant's motion to dismiss that count.

Count II of plaintiff's amended complaint in No. 49267 involves essentially the same questions previously raised in

Hanley with regard to the intent of the General Assembly when it proposed article IX–A and the content of the informational pamphlet concerning the proposed amendment which was mailed to the electorate prior to the referendum thereon. It is unnecessary to reexamine these matters here. We did not then and we do not now agree with plaintiff's argument that the information given to voters prior to the referendum on article IX–A was false and misleading, and we likewise find no merit in the allegations that her right to vote would be unconstitutionally abridged unless article IX–A is construed in the manner she proposes. We accordingly hold that the trial court did not err in granting defendants' motion to dismiss count II of plaintiff's second amended complaint in cause No. 49267.

The final issue raised by the pleadings in each case concerns the validity of the memorandum of October 14, 1975, issued by the Director of the Department of Local Government Affairs advising county taxing officials throughout the State "that personal property held by any fiduciary for the benefit of a natural person, including personal property held under a voluntary fiduciary arrangement, not be assessed for 1975." For the reasons stated earlier in this opinion, we conclude that the advice contained in that memorandum is inconsistent with law and not binding on local taxing officials. The trial court correctly so held.

Accordingly, the judgments of the circuit court of Cook County are affirmed.

Judgments affirmed.

Journal of the Illinois Senate, No. 53, April 29, 1969, at pages 1038 and 1039 showing the submission of Senate Joint Resolution No. 30, as follows:

Senator Arrington moved that the Rules be suspended for the purpose of introducing a Constitutional Amendment.

The motion prevailed.

Senators Arrington, Coulson, Harris, Groen, Davidson and Collins offered the following Senate Joint Resolution:

SENATE JOINT RESOLUTION No. 30

Resolved, By the Senate of the Seventy-sixth General Assembly of the State of Illinois, the House of Representatives concurring herein, that there shall be submitted to the electors of the State for adoption or rejection at the next election of members of the General Assembly of the State of Illinois, in the manner provided by law, a proposition to add Article IX-A to the Constitution, the added Article to read as follows:

ARTICLE IX-A

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited.

SCHEDULE

Paragraph 1. This amendment shall become effective January 1, 1971.

Senator Arrington moved that the foregoing resolution be referred to the Secretary's desk.

The motion prevailed.

Journal of the Illinois Senate, No. 64, May 15, 1969, at pages 1407-1408 showing the adoption of an amendment to Senate Joint Resolution No. 30 and the adoption of Senate Joint Resolution No. 30, as amended:

CONSIDERATION OF SENATE JOINT RESOLUTION ON SECRETARY'S DESK

Senator Arrington moved that Senate Joint Resolution No. 30 on the Secretary's Desk be taken up for immediate consideration.

Senators McGloon and Arrington offered the following amendment:

AMENDMENT No. 1

Amend Senate Joint Resolution No. 30 on line 15 by striking the period and adding the following: *"as to individuals."*

Senator McGloon moved the adoption of the foregoing amendment.

The motion prevailed and the amendment was adopted.

Senator Arrington moved that the foregoing Senate Joint Resolution as amended be adopted.

And on that motion a call of the roll was had resulting as follows: Yeas, 46; nays, 3.

The following voted in the affirmative:

Arrington	Graham	Mitchell
Baltz	Groen	Mitchler
Bennett	Harris	Mohr
Berning	Hoffelder	Newhouse
Bidwill	Horsley	Nihill
Carpentier	Knuepfer	Peters
Carroll	Kusibab	Romano
Chew	Lanigan	Rosander
Collins	Larson	Saperstein
Coulson	Latherow	Schoeninger
Davidson	Laughlin	Smith
Donnewald	Lyons	Sokolnicki
Dougherty	McBroom	Soper
Duda	McCarthy	Swanson
Fawell	McGloon	
Gilbert	Merritt	

Yeas—46.

The following voted in the negative:

Clarke	Dixon	Ottwein

Nays—3.

The resolution having received the votes of two-thirds of the members elected, was declared adopted.

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence therein.

Senator Arrington moved to reconsider the vote by which Senate Joint Resolution No. 30 was adopted.

Senator Swanson moved that Senator Arrington's motion lie on the table.

The motion to table prevailed.

As so amended and adopted by the Illinois Senate on May 15, 1969 Senate Joint Resolution No. 30 read as follows:

"Senate Joint Resolution No. 30

Resolved, By the Senate of the Seventy-sixth General Assembly of the State of Illinois, the House of Representatives concurring herein, that there shall be submitted to the electors of the State for adoption or rejection at the next election of members of the General Assembly of the State of Illinois, in the manner provided by law, a proposition to add Article IX–A to the Constitution, the added Article to read as follows:

ARTICLE IX–A

Section 1. Notwithstanding any other provisions of this Constitution, the taxation of personal property by valuation is prohibited as to individuals.

SCHEDULE

Paragraph 1. This amendment shall become effective January 1, 1971."

Journal of the Illinois House of Representatives, No. 85, June 30, 1969 at page 5076, showing House concurrence in the adoption of Senate Joint Resolution No. 30, as amended, as follows:

SENATE JOINT RESOLUTION CONSTITUTIONAL AMENDMENTS THIRD READING

Senate Joint Resolution No. 30. Was taken up and read at large a third time.

Pending discussion, Mr. Downes moved the previous question.

And the question being, "Shall the main question be now put?" it was decided in the affirmative.

And the question then being on the concurrence in the adoption of Senate Joint Resolution No. 30, it was decided in the affirmative by the following vote: Yeas, 171; nays, none; answering present, 2.

Those voting in the affirmative are:

Alsup
Anderson, M. K.
Anderson, R. E.
Arrigo
Barr
Barry, Don
Barry, Tobias
Berman
Blades
Blair
Bluthardt
Borchers
Brandt
Brinkmeier
Burditt
Burgoon
Caldwell
Calvo
Campbell
Capuzi
Carrigan
Carter
Chapman
Choate
Clabaugh
Collins, O. G.
Collins, P. W.
Conolly, John
Copeland
Corbett
Course
Cox
Craig
Cunningham, L.
Cunningham, W.
Davis
Dawson
Day
DiPrima
Downes
Dyer
Elrod
Epton
Ewell
Fary
Fennessey
Friedland
Gardner
Garmisa
Geisler
Giorgi
Graham
Granata
Hall, Harber
Hall, Kenneth
Hanahan
Harpstrite
Hart
Henss
Hill
Hoffman, G. L.
Hoffman, R. K.
Holloway
Homeier
Houde
Houlihan
Hunsicker
Hyde
Jacobs
Janczak
Johnson
Johnston
Jones, J. D.
Jones, L. N.
Juckett
Kahoun
Karmazyn
Katz
Keller
Kennedy
Kipay
Kirie
Kleine, J. H.
Klosak
Krause
Lauterbach
Lechowicz
Lehman
Lenard
Lindberg
Londrigan
Madigan
Mann
Maragos
Markert
Matijevich
McAvoy
McClain
McCormick
McDermott
McDevitt
McGah
McLendon
McPartlin
Merlo
Meyer
Miller, K. W.
Miller, P. J.
Moore
Morgan
Murphy
Neff
North
Nowlan
O'Hallaren
Palmer
Pappas
Peterson
Philip
Pierce
Randolph
Rayson
Redmond
Regner
Ropa
Rose
Sandquist
Savickas
Scariano
Schisler
Schlickman
Schoeberlein
Sevcik
Shade
Shapiro
Shaw
Shea
Simmons
Sims
Smith, F. J.
Soderstrom
Springer
Stedelin
Stolle
Stone
Taylor
Telcser
Thompson, J. W.
Thompson, R. L.
Tipsword
Touhy
Tuerk
Vadalabene

Waddell	Washington, G.	Wolfe, B. B.
Walker	Washington, H.	Wright
Wall	Weaver	Yourell
Walsh, R. A.	Williams	Mr. Speaker
Walsh, Wm. D.	Wolbank	Yeas—171.
Warman	Wolf, F. C.	
Washburn	Wolf, J. J.	Nays—0.

Answering present:

Bradley	Elward	Answering present—2.

And the House concurred with the Senate in the adoption of the resolution, by a two-thirds vote.

Ordered that the Clerk inform the Senate thereof.

Journal of the Illinois Senate, No. 103, June 30, 1969 showing the offering and adoption of Senate Joint Resolution No. 43 at page 3459.

"Senator Arrington offered the following Senate Joint Resolution and, having asked and obtained unanimous consent to suspend the rules for its immediate consideration, moved its adoption:

SENATE JOINT RESOLUTION NO. 43

Resolved, By the Senate of the Seventy-sixth General Assembly of the State of Illinois, the House of Representatives concurring herein, that a special committee on constitutional amendments, to consist of 5 members of the Senate appointed by the President pro tempore and 5 members of the House of Representatives appointed by the Speaker, be appointed to prepare a brief explanation of the constitutional amendment which is to be submitted to the electors at the next election for members of the General Assembly and a brief argument in favor of such amendment, and the form in which the amendment shall appear on the separate ballot, in conformity with "An Act to provide the manner of proposing amendments to the constitution, and submitting the same to the electors of this State," approved March 14, 1877, as amended, which Committee shall report to the present General Assembly not later than June 30, 1969; and be it further

Resolved, That a special committee on constitutional amendments, to consist of 5 members of the Senate appointed by the President pro tempore and 5 members of the House of Representatives appointed by the Speaker, be appointed to prepare a brief argument against such amendment, which Committee shall report to the present General Assembly not later than June 30, 1969.

The motion prevailed and the resolution was adopted.

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence therein."

Senate Joint Resolution No. 43 was approved by the Illinois House of Representatives on June 30, 1969 (Journal of the House of Representatives, No. 85, June 30, 1969, at pages 5171 and 5172).

Journal of the Illinois House of Representatives, No. 89, October 23, 1969 at pages 5426 to 5429 indicating the submission of the initial "Report of Special Joint Committees on Submission of Proposed Constitutional Amendment", said initial Report reading as follows:

"REPORTS"

"The special joint committee appointed pursuant to Senate Joint Resolution No. 43 submitted the following:

REPORT OF SPECIAL JOINT COMMITTEES ON SUBMISSION OF THE PROPOSED CONSTITUTION AMENDMENT

To the Honorable, the Members of the Senate and House of Representatives of the Seventy-Sixth General Assembly of the State of Illinois:

There is submitted herewith the report of your special joint committees appointed pursuant to Senate Joint Resolution No. 43 for the purpose of preparing the explanation, arguments, and form of a ballot on the constitutional amendment to be voted upon by the people at the election to be held on November 10, 1970. The amendment—a proposal to add Article IX-A to the Constitution—(prohibition of taxation of personal property by valuation as to individuals) will be submitted to the people by the action of this General Assembly. The pages which follow present

an explanation of the proposed amendment, give the argument in favor if it as seen by the majority of the General Assembly, give the argument against it as seen by a minority of the General Assembly, and present the form in which the ratification issue is to appear before the electorate on the ballot.

Respectfully submitted.

Committee of the Senate (Members preparing arguments in favor)	*Committee of the House (Members preparing arguments in favor*
TOM MERRITT	EDWARD J. COPELAND
EVERETT E. LAUGHLIN	LESLIE N. JONES
JAMES H. DONNEWALD	R. F. TIPSWORD
ROBERT W. McCARTHY	
Committe of the Senate (Members preparing arguments against)	*Committee of the House (Members preparing arguments against)*
TERREL E. CLARKE	T. J. HANAHAN, JR.
DANIEL DOUGHERTY	BERNARD McDEVITT
CECIL A. PARTEE	ANTHONY SCARIANO

EXPLANATION OF AMENDMENT

The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870, Article IX–A, thus setting aside existing provisions in Article IX, Section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations.

FORM OF BALLOT FOR AMENDMENT

Immediately below the above explanation on the ballot shall be printed substantially the following:

Place an X in blank opposite "YES" or "NO" to indicate your choice.

	YES	For the proposed amendment to add Article IX–A to the Constitution. (Prohibition of taxation of personal property by valuation as to individuals.)
	NO	

ARGUMENTS IN FAVOR OF THE PROPOSED AMENDMENT

The purpose of the proposed addition of Article IX–A to the Constitution is to abolish the unfair and unworkable taxation of personal property of individuals throughout Illinois.

The present taxation of personal property of individuals is unfair because:—It is not evenly administered, and cannot be. Variations in assessment practices from one assessing district to another are extreme, and result in unfair treatment of some taxpayers while others virtually escape any taxation of this kind. Individuals in Chicago for example, comprising about a third of the population of the State, pay no personal property taxes, while individuals in suburban Cook County and in other counties of Illinois pay taxes on their automobiles, on their household furniture, in some cases on their bank accounts and other financial resources (often at rates which are confiscatory of the earnings they are able to achieve), and, in rural areas, on their livestock, grain, farm implements, etc.

—The taxation of personal property is a relic of the 19th century, when agriculture was the predominant occupation in the State, when a man's worth and ability to pay could be measured by his material possessions, when intangible assets were not at all common, and when personal property could not be easily hidden from assessors. Things are different today. Intangible assets are common, but not easily assessed and taxed. Thus, personal property taxation is now made, for the most part, of necessities of modern life such as family automobiles and a family's furniture.

—Personal property taxation encourages cheating and evasion. Virtually every property taxpayer in the State perjures himself every year because he does not report all

of his personal property to the assessor. This built-in feature of personal property taxation cannot do otherwise than to aid and abet the disintegration of the moral values of our society which we have cherished for so long and which we see slipping away day by day.

If adopted by the people of Illinois, this amendment to our Constitution will:

—Remove the necessity of cheating on taxes, remove the impossible demands now placed on assessors to achieve fair taxation, and, above all, remove an onerous and universally despised tax program.

—Modernize the revenue provisions of our Constitution, an objective of which the people of Illinois have indicated they are heartily in favor.

The abolition of personal property taxation should be accomplished by constitutional reform. It should not be left to statutory action, which cannot be permanent in nature and which most certainly would lead to continuous court action and indecision as to exactly what was intended.

Even the placing of this question on the ballot for the people to consider has been a powerful indication to Illinois' constitutional convention delegates that the people prefer to end this unfair kind of taxation. At the time these arguments in favor of amending the Constitution were prepared, it could not be known what the constitutional convention's final decision on personal property taxation would be. But adoption of this amendment will indicate, once and for all time, that the people are fed up with unfair taxation.

The loss of revenue to local governments in Illinois if personal property taxation of individuals is abolished will be considerable, to be sure. But modernization of our entire tax system will make possible replacement of this needed revenue through other, fairer, sources.

In short, there is no compelling argument which can now be raised against adoption of this amendment. And there is every reason to support it.

Arguments Against the Proposed Amendment

There is no question of the dissatisfaction with the taxation of personal property at present in Illinois. It is discriminatory, it is unfair, it is almost impossible to administer, and it is economically unsound. But the same can be said of the proposed amendment, and moreover the amendment, if adopted, could be injurious to the finances of local governments because it makes no provision for the replacement of the lost revenues.

—It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by natural persons is exempted from taxes; that which is owned by corporations, trusts, etc., is subject to taxes. How will this affect a piece of equipment still titled to the original owner, a corporation, while the user make payments on it? Business interests generally will be at a disadvantage under this amendment.

—It is unfair because it gives no relief to merchants and manufacturers whose inventories are now subject to tax, depending on the practice of the assessor in their locale, so that they may be at a competitive disadvantage with merchants elsewhere and, in the case of industry, with out of State manufacturers.

—It will be almost impossible to administer the amended tax equally because the location of some kinds of personalty, such as shares of intangibles not owned by individuals, which can be shifted out of the State, but this is not true for tangible personalty—machinery, equipment, etc.—owned by a corporation or trust.

—It is economically unsound because it places a burden on the corporate form of business organization. Under the new State income tax law, corporations are taxed at a higher rate than individuals; why should they be subjected to the continued personal property tax when individuals are not?

—It will be injurious to local governments because no provision is made to replace the lost revenue. It is estimated that from 6 to 7 percent of all property on the tax rolls now

falls in the class of individually owned personal property that will be exempted. Where will this loss of revenue (about $140,000,000) be made up? By raising real estate taxes? The income tax proceeds are being shared with cities and counties; what about other types of local governments? How will they make up the difference?

The amendment should be defeated. The only useful purpose it can serve is to induce the Constitutional Convention to provide a fair, equitable, and administratively sound tax system, with an allocation of revenues to local governments to replace any loss from discontinuing or modifying the present system of personal property taxation.

The initial "Report of Special Joint Committees on Submission of Proposed Constitutional Amendment" had previously been submitted to and adopted by the Illinois Senate on June 30, 1969. (Journal of the Illinois Senate, No. 103, June 30, 1969 at pages 3535-3537).

Journal of the Illinois House of Representatives, No. 102, May 6, 1970, at pages 6313-6316, showing the submission and adoption of a corrected "Report of Special Joint Committees on Submission of Proposed Constitutional Amendment", said Corrected Report reading as follows:

"REPORTS"

Mr. McDevitt, from the Special Joint Committee appointed pursuant to Senate Joint Resolution No. 43, submitted the following corrected report in lieu of a report printed in House Journal No. 89 on October 23, 1969:

REPORT OF SPECIAL JOINT COMMITTEES
ON SUBMISSION OF PROPOSED
CONSTITUTIONAL AMENDMENT

To the Honorable, the Members of the Senate and House of Representatives of the Seventy-sixth General Assembly of the State of Illinois:

There is submitted herewith the report of your special joint committees appointed pursuant to Senate Joint Resolution No. 43 for the purpose of preparing the explanation, arguments, and form of a ballot on the constitutional amendment to be voted upon by the people at the election to be held on November 10, 1970. The amendment—a proposal to add Article IX-A to the Constitution—(prohibition of taxation of personal property by valuation as to individuals) will be submitted to the people by the action of this General Assembly. The pages which follow present an explanation of the proposed amendment, give the argument in favor of it as seen by the majority of the General Assembly, give the argument against it as seen by a minority of the General Assembly and present the form in which the ratification issue is to appear before the electorate on the ballot.

Respectfully submitted,

Committee of the Senate (Member preparing arguments in favor)	*Committee of the House* (Membes preparing arguments in favor)
TOM MERRITT	EDWARD J. COPELAND
EVERETT E. LAUGHLIN	LESLIE N. JONES
JAMES H. DONNEWALD	ROLLAND F. TIPSWORD
ROBERT W. MCCARTHY	

Committee of the Senate (Members preparing arguments against)	*Committee of the House* (Members preparing arguments against)
TERREL E. CLARKE	THOMAS J. HANAHAN
DANIEL DOUGHERTY	BERNARD MCDEVITT
CECIL A. PARTEE	ANTHONY SCARIANO

EXPLANATION OF AMENDMENT.

The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870. Article IX-A, thus setting aside existing provisions in Article IX, section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations.

Form of Ballot for Amendment

Immediately below the above explanation on the ballot shall be printed substantially the following:

Place an X in blank opposite "YES" or "NO" to indicate your choice.

	YES	For the proposed amendment to add Article IX-A to the Constitution. (Prohibition of taxation of personal property by valuation as to individuals.)
	NO	

Arguments in Favor of the Proposed Amendment

The purpose of the proposed addition of Article IX-A to the Constitution is to abolish the unfair and unworkable taxation of personal property of individuals throughout Illinois.

The present taxation of personal property of individuals is unfair because:

—It is not evenly administered and cannot be. Variations in assessment practices from one assessing district to another are extreme, and result in unfair treatment of some taxpayers while others virtually escape any taxation of this kind. Individuals comprising about a third of the population of the State pay no personal property taxes whatever, while the rest pay taxes on their automobiles, on their household furniture, in some cases on their bank accounts and other financial resources, and, in rural areas, on their livestock, grain, farm implements, etc.

—The taxation of personal property is a relic of the 19th century, when agriculture was the predominant occupation in the State, when a man's worth and ability to pay could be measured by his material possessions, when intangible assets were not at all common, and when personal property could not be easily hidden from assessors. Things are different today. Intangible assets are common, but not easily assessed and taxed. Thus, personal property taxation is now made,

for the most part, of necessities of modern life such as family automobiles and a family's furniture.

—Personal property taxation encourages cheating and evasion. Virtually every property taxpayer in the State perjures himself every year because he does not report all of his personal property to the assessor. This built-in feature of personal property taxation cannot do otherwise than to aid and abet the disintegration of the moral values of our society which we have cherished for so long and which we see slipping away day by day.

If adopted by the people of Illinois, this amendment to our Constitution will:

—Remove the necessity of cheating on taxes, remove the impossible demands now placed on assessors to achieve fair taxation, and, above all, remove an onerous and universally despised tax program.

—Modernize the revenue provisions of our Constitution, an objective of which the people of Illinois have indicated they are heartily in favor.

The abolition of personal property taxation should not be accomplished by constitutional reform. It should not be left to statutory action, which cannot be permanent in nature and which most certainly would lead to continuous court action and indecision as to exactly what was intended.

Even the placing of this question on the ballot for the people to consider has been a powerful indication to Illinois' constitutional convention delegates that the people prefer to end this unfair kind of taxation. At the time these arguments in favor of amending the Constitution were prepared, it could not be known what the constitutional convention's final decision on personal property taxation would be. But adoption of this amendment will indicate, once and for all time, that the people are fed up with unfair taxation.

The loss of revenue to local governments in Illinois if personal property taxation of individuals is abolished will be considerable, to be sure. But modernization of our entire tax system will make possible replacement of this needed revenue through other, fairer, sources.

In short, there is no compelling argument which can now be raised against adoption of this amendment. And there is every reason to support it.

ARGUMENTS AGAINST THE PROPOSED AMENDMENT

There is no question of the dissatisfaction with the taxation of personal property at present in Illinois. It is discriminatory, it is unfair, it is almost impossible to administer, and it is economically unsound. But the same can be said of the proposed amendment, and moreover the amendment, if adopted, could be injurious to the finances of local governments because it makes no provision for the replacement of the lost revenues.

—It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes. How will this affect a piece of equipment still titled to the original owner, a corporation, while the user makes payments on it? Business interest generally will be at a disadvantage under this amendment.

—It is unfair because it gives no relief to merchants and manufacturers whose inventories are now subject to tax, depending on the practice of the assessor in their locale, so that they may be at a competitive disadvantage with merchants elsewhere and, in the case of industry, with out of state manufacturers.

—It will be almost impossible to administer the amended tax equally because the location of some kinds of personality, such as shares of intangibles not owned by individuals, which can be shifted out of the state, but this is not true for tangible personalty—machinery, equipment, etc.—owned by a corporation.

—It is economically unsound because it places a burden on the corporate form of business organization. Under the new State income tax law, corporations are taxed at a higher rate than individuals; why should they be subjected

to the continued personal property tax when individuals are not?

—It will be injurious to local governments because no provision is made to replace the lost revenue. It is estimated that from 6 to 7 percent of all property on the tax rolls now falls in the class of individually owned personal property that will be exempted. Where will this loss of revenue (about $140,000,000) be made up? By raising real estate taxes? The income tax proceeds are being shared with cities and counties; what about other types of local governments? How will they make up the difference?

The amendment should be defeated. The only useful purpose it can serve it to induce the Constitutional Convention to provide a fair, equitable, and administratively sound tax system, with an allocation of revenues to local governments to replace any loss from discontinuing or modifying the present system of personal property taxation.

Mr. McDevitt moved that leave be granted to the Special Committee to submit the foregoing corrected report for adoption.

The motion prevailed.

Mr. McDevitt then moved that the House adopt the corrected report.

And the motion prevailed.

Ordered that the Clerk inform the Senate thereof and ask their concurrence therein.

The corrected "Report of Special Joint Committees on Submission of Prepared Constitutional Amendment" was approved by the Illinois Senate on May 7, 1970 (Journal of the Illinois Senate, No. 123, May 7, 1970, at pages 4202-4205):

COMPOSITE REPORT OF INITIAL AND CORRECTED REPORTS OF THE SPECIAL COMMITTEE ON CONSTITUTIONAL AMENDMENTS, SHOWING DELETED MATTER CROSSED OUT AND NEW MATTER UNDERLINED.

REPORT OF SPECIAL JOINT COMMITTEES ON SUBMISSION IF PROPOSED CONSTITUTION AMENDMENT

To the Honorable, the Members of the Senate House of Representatives of the Seventy-Sixth General Assembly of the State of Illinois:

There is submitted herewith the report of your special joint committees appointed pursuant to Senate Joint Resolution No. 43 for the purpose of preparing the explanation, arguments, and form of a ballot on the constitutional amendment to be voted upon by the people at the election to be held on November 10, 1970. The amendment—a proposal to add Article IX-A to the Constitution—(prohibition of taxation of personal property by valuation as to individuals) will be submitted to the people by the action of this General Assembly. The pages which follow present an explanation of the proposed amendment, give the argument in favor of it as seen by the majority of the General Assembly, give the argument against it as seen by a minority of the General Assembly, and present the form in which the ratification issue is to appear before the electorate on the ballot.

Respectfully submitted,

Committee of the Senate (Members preparing arguments in favor)
TOM MERRITT
EVERETT E. LAUGHLIN
JAMES H. DONNEWALD
ROBERT W. MCCARTHY

Committee of the House (Members preparing arguments in favor)
EDWARD J. COPELAND
LESLIE N. JONES
R. F. TIPSWORD

Committee of the Senate (Members preparing arguments against)
TERREL E. CLARKE
DANIEL DOUGHERTY
CECIL A. PARTEE

Committee of the House (Members preparing arguments against)
T. J. HANAHAN, JR.
BERNARD MCDEVITT
ANTHONY SCARIANO

EXPLANATION OF AMENDMENT

The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870, Article IX–A, thus setting aside existing provisions in Article IX, section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations.

FORM OF BALLOT FOR AMENDMENT

Immediately below the above explanation on the ballot shall be printed substantially the following:

Place an X in blank opposite "YES" or "NO" to indicate your choice.

	YES	For the proposed amendment to add Article IX–A to the Constitution. (Prohibition of taxation of personal property by valuation as to individuals.)
	NO	

ARGUMENTS IN FAVOR OF THE PROPOSED AMENDMENT

The purpose of the proposed addition to Article IX–A to the Constitution is to abolish the unfair and unworkable taxation of personal property of individuals throughout Illinois.

The present taxation of personal property of individuals is unfair because:—It is not evenly administered, and cannot be. Variations in assessment practices from one assessing district to another are extreme, and result in unfair treatment of some taxpayers while others virtually escape any taxation of this kind. Individuals ~~*in Chicago for example,*~~ comprising about a third of the population of the State, pay no personal property taxes whatever, while ~~*individuals in suburban Cook County and in other*~~

~~counties of Illinois~~ the rest pay taxes on their automobiles, on their household furniture, in some cases on their bank accounts and other financial resources (often at rates which are confiscatory of the earnings they are able to achieve), and, in rural areas, on their livestock, grain, farm implements, etc.

The taxation of personal property is a relic of the 19th century, when agriculture was the predominant occupation in the State, when a man's worth and ability to pay could be measured by his material possessions, when intangible assets were not at all common, and when personal property could not be easily hidden from assessors. Things are different today. Intangible assets are common, but not easily assessed and taxed. Thus, personal property taxation is now made, for the most part, of necessities of modern life such as family automobiles and a family's furniture.

Personal property taxation encourages cheating and evasion. Virtually every property taxpayer in the State perjures himself every year because he does not report all of his personal property to the assessor. This built-in feature of personal property taxation cannot do otherwise than to aid and abet the disintegration of the moral values of our society which we have cherished for so long and which we see slipping away day by day.

If adopted by the people of Illinois, this amendment to our Constitution will:

Remove the necessity of cheating on taxes, remove the impossible demands now placed on assessors to achieve fair taxation, and, above all, remove an onerous and universally despised tax program.

Modernize the revenue provisions of our Constitution, an objective of which the people of Illinois have indicated they are heartily in favor.

The abolition of personal property taxation should be accomplished by constitutional reform. It should not be left to statutory action, which cannot be permanent in nature and which most certainly would lead to continuous court action and indecision as to exactly what was intended.

Even the placing of this question on the ballot for the people to consider has been a powerful indication to

Illinois' constitutional convention delegates that the people prefer to end this unfair kind of taxation. At the time these arguments in favor of amending the Constitution were prepared, it could not be known what the constitutional convention's final decision on personal property taxation would be. But adoption of this amendment will indicate, once and for all time, that the people are fed up with unfair taxation.

The loss of revenue to local governments in Illinois if personal property taxation of individuals is abolished will be considerable, to be sure. But modernization of our entire tax system will make possible replacement of this needed revenue through other, fairer, sources.

In short, there is no compelling argument which can now be raised against adoption of this amendment. And there is every reason to support it.

Argument Against the Proposed Amendment

There is no question of the dissatisfaction with the taxation of personal property at present in Illinois. It is discriminatory, it is unfair, it is almost impossible to administer, and it is economically unsound. But the same can be said of the proposed amendment, and moreover the amendment, if adopted, could be injurious to the finances of local governments because it makes no provision for the replacement of the lost revenues.

It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, ~~trusts~~, etc., is subject to taxes. How will this affect a piece of equipment still titled to the original owner, a corporation, while the user makes payments on it? Business interests generally will be at a disadvantage under this amendment.

It is unfair because it gives no relief to merchants and manufacturers whose inventories are now subject to tax, depending on the practice of the assessor in their locale, so that they may be at a competitive disadvantage with

merchants elsewhere and, in the case of industry, with out of State manufacturers.

It will be almost impossible to administer the amended tax equally because the location of some kinds of personalty, such as shares of intangibles not owned by individuals, which can be shifted out of the State, but this is not true for tangible personalty—machinery, equipment, etc.—owned by a corporation ~~*or trust*~~.

It is economically unsound because it places a burden on the corporate form of business organization. Under the new State income tax law, corporations are taxed at a higher rate than individuals; why should they be subjected to the continued personal property tax when individuals are not?

It will be injurious to local governments because no provision is made to replace the lost revenue. It is estimated that from 6 to 7 percent of all property on the tax rolls now falls in the class of individually owned personal property that will be exempted. Where will this loss of revenue (about $140,000,000) be made up? By raising real estate taxes? The income tax proceeds are being shared with cities and counties; what about other types of local governments? How will they make up the difference?

The amendment should be defeated. The only useful purpose it can serve is to induce the Constitutional Convention to provide a fair, equitable, and administratively sound tax system, with an allocation of revenues to local governments to replace any loss from discontinuing or modifying the present system of personal property taxation.

OFFICIAL BLUE PAMPHLET MAILED TO THE ILLINOIS ELECTORATE BY THE ILLINOIS SECRETARY OF STATE:

AMENDMENT
to the
CONSTITUTION OF ILLINOIS

That Will Be Submitted to the Voters
November 3, 1970

This folder includes
Proposed Amendments to Constitution
Explanation of Proposed Amendment
Arguments in Favor of Proposed Amendment
Arguments Against Proposed Amendment
Form of Ballot

Published in compliance with Statute
by

PAUL POWELL
Secretary of State

To the Electors of the State of Illinois:

At the general election to be held on the 3rd day of November, 1970 a blue ballot will be given to you and you will be called upon in your sovereign capacity as citizens to adopt or reject the following proposed amendment to the Constitution of Illinois.

PROPOSED AMENDMENT TO ADD ARTICLE IX-A

(Prohibition of taxation of personal property by valuation as to individuals.)

Article IX-A

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals.*

Schedule

Paragraph 1. This amendment shall become effective January 1, 1971.

Explanation of Amendment
(See Form of Ballot)

ARGUMENTS IN FAVOR OF THE PROPOSED AMENDMENT

The purpose of the proposed addition of Article IX-A to the Constitution is to abolish the unfair and unworkable taxation of personal property of individuals throughout Illinois.

The present taxation of personal property of individuals is unfair because:

—It is not evenly administered, and cannot be. Variations in assessment practices from one assessing district to another are extreme, and result in unfair treatment of some taxpayers while others virtually escape any taxation of this kind. Individuals comprising about a third of the population of the State pay no personal property taxes whatever, while the rest pay taxes on their automobiles, on their household furniture, in some cases on their bank accounts and other financial resources, and, in rural areas, on their livestock, grain, farm implements, etc.

—The taxation of personal property is a relic of the 19th century, when agriculture was the predominant occupation in the State, when a man's worth and ability to pay could be measured by his material possessions, when intangible assets were not at all common, and when personal property could not be easily hidden from assessors. Things are different today. Intangible assets are common, but not easily assessed and taxed. Thus, personal property taxation is now made, for the most part, of necessities of modern life such as family automobiles and a family's furniture.

—Personal property taxation encourages cheating and evasion. Virtually every property taxpayer in the State perjures himself every year because he does not report all of his personal property to the assessor. This built-in feature of personal property taxation cannot do otherwise

than to aid and abet the disintegration of the moral values of our society which we have cherished for so long and which we see slipping away day by day.

If adopted by the people of Illinois, this amendment to our Constitution will:

—Remove the necessity of cheating on taxes, remove the impossible demands now placed on assessors to achieve fair taxation, and, above all, remove an onerous and universally despised tax program.

—Modernize the revenue provisions of our Constitution, an objective of which the people of Illinois have indicated they are heartily in favor.

The abolition of personal property taxation should be accomplished by constitutional reform. It should not be left to statutory action, which cannot be permanent in nature and which most certainly would lead to continuous court action and indecision as to exactly what was intended.

Even the placing of this question on the ballot for the people to consider has been a powerful indication to Illinois' constitutional convention delegates that the people prefer to end this unfair kind of taxation. At the time these arguments in favor of amending the Constitution were prepared, it could not be known what the constitutional convention's final decision on personal property taxation would be. But adoption of this amendment will indicate, once and for all time, that the people are fed up with unfair taxation.

The loss of revenue to local governments in Illinois if personal property taxation of individuals is abolished will be considerable, to be sure. But modernization of our entire tax system will make possible replacement of this needed revenue through other, fairer, sources.

In short, there is no compelling argument which can now be raised against adoption of this amendment. And there is every reason to support it.

Arguments Against the Proposed Amendment

There is no question of the dissatisfaction with the taxation of personal property at present in Illinois. It is discriminatory, it is unfair, it is almost impossible to administer, and it is economically unsound. But the same can be said of the proposed amendment, and moreover the amendment, if adopted, could be injurious to the finances of local governments because it makes no provisions for the replacement of the lost revenues.

—It is discriminatory because it creates a tax liability based on the nature of the ownership of property and not because of the nature of the property itself. That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes. How will this affect a piece of equipment still titled to the original owner, a corporation, while the user makes payments on it? Business interests generally will be at a disadvantage under this amendment.

—It is unfair because it gives no relief to merchants and manufacturers whose inventories are now subject to tax, depending on the practice of the assessor in their locale, so that they may be at a competitive disadvantage with merchants elsewhere and, in the case of industry, with out of State manufacturers.

—It will be almost impossible to administer the amended tax equally because the location of some kinds of personalty, such as shares of intangibles not owned by individuals, which can be shifted out of the State, but this is not true for tangible personalty—machinery, equipment, etc.—owned by a corporation.

It is economically unsound because it places a burden on the corporate form of business organization. Under the new State income tax law, corporations are taxed at a higher rate than individuals; why should they be subjected to the continued personal property tax when individuals are not?

—It will be injurious to local governments because no provision is made to replace the lost revenue. It is estimated that from 6 to 7 percent of all property on the tax rolls now falls in the class of individually owned personal property that will be exempted. Where will this loss of revenue (about $140,000,000) be made up? By raising real estate taxes? The income tax proceeds are being shared with cities and counties; what about other types of local governments? How will they make up the difference?

The amendment should be defeated. The only useful purpose it can serve is to induce the Constitutional Convention to provide a fair, equitable, and administratively sound tax system, with an allocation of revenues to local governments to replace any loss from discontinuing or modifying the present system of personal property taxation.

Form of Ballot

Proposed Amendment to Add Article IX–A

(Prohibition of taxation of personal property by valuation as to individuals.)

Explanation of Amendment

The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870. Article IX–A, thus setting aside existing provisions in Article IX, section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations.

Place an X in blank opposite "Yes" or "No" to indicate your choice.

	YES	For the proposed amendment to add Article IX–A to the Constitution. (Prohibition of taxation of personal property by valuation as to individuals.)
	NO	

Capitol Building
Springfield, Illinois
Office of the Secretary of State

I, Paul Powell, Secretary of State of the State of Illinois, do hereby certify that the foregoing contains a true and correct copy of the proposed amendment, the explanation of the proposed amendment, the arguments in favor of the proposed amendment, the arguments against proposed amendment and the form in which said amendment will appear upon a separate blue ballot pursuant to Senate Joint Resolution No. 30 of the Seventy-sixth General Assembly, the original of which is on file in this office.

In Witness Whereof, I hereunto set my hand and affix the Great Seal of the State of Illinois. Done at my office in the Capitol Building in the city of Springfield this 27th day of February A.D. 1970, and of the Independence of the United States the one hundred and ninety-fourth.

/s/ PAUL POWELL
(SEAL) *Secretary of State*

Journal of the Illinois Senate No. 131, May 19, 1970, at page 4405, showing adoption of Senate Joint Resolution No. 67, reading as follows:

PRESENTATION OF RESOLUTIONS

Senators Harris, Arrington, Coulson, Carpentier, Laughlin, Sours, Baltz, Davidson, Larson, Horsley, Latherow, Collins, Mitchell, Gilbert, Ottwein, McBroom, Rosander, Mitchler and Berning offered the following Senate Joint Resolution:

SENATE JOINT RESOLUTION No. 67

Resolved, By the Senate of the Seventy-sixth General Assembly of the State of Illinois, the House of Representatives concurring herein, that, in adopting Senate Joint Resolution No. 30, which submits to the electors of this State a constitutional amendment prohibiting the taxation of personal property by valuation as to individuals, it was

the intention of this General Assembly to abolish the ad valorem taxation of personal property owned by a natural person or by two or more natural persons, and that, by the use of the phrase "as to individuals", this General Assembly intended to mean a natural person, or two or more natural persons as joint tenants or tenants in common.

Senator Harris having asked and obtained unanimous consent to suspend the rules for the immediate consideration of the resolution, moved its adoption.

The motion prevailed and the resolution was adopted.

Ordered that the Secretary inform the House of Representatives thereof and ask their concurrence therein.

Journal of the Illinois House of Representatives, No. 115, May 29, 1970 at page 7145, showing House concurrence with the Senate in the adoption of Senate Joint Resolution No. 67:

The Speaker took from his table and laid before the House, Senate Joint Resolution No. 67, reported out of the Executive Committee on May 26th with the recommendation that it be concurred in.

Mr. Nowlan moved that the House concur with the Senate in the adoption of the resolution.

On that motion, a vote was taken resulting as follows: Yeas, 84; nays, 20.

Those voting in the affirmative are:

Anderson, M. K.	Geisler	Lauterbach
Anderson, R. E.	Giorgi	Lindberg
Barry, Tobins	Granata	Madigan
Berman	Hall, Barber	Markert
Blades	Harpstrite	McCormick
Blair	Henss	McDevitt
Bluthardt	Hill	McGah
Borchers	Hoffman, G. L.	Miller, K. W.
Burditt	Hoffman, R. K.	Miller, F. J.
Campbell	Homeier	Moore
Capuzi	Houde	Morgan
Choate	Hyde	Neff
Collins, P. W.	Janczak	North
Conolly, John	Johnson	Nowlan
Copeland	Johnston	Palmer
Cox	Jones, J. D.	Pappas
Cunningham, L.	Jones, L. N.	Peterson
Dawson	Kahoun	Philip
Day	Karmazyn	Randolph
Epton	Kipley	Redmond
Friedland	Kleine, J. H.	Regner

Rose	Thompson, J. W.	Washington, G.
Sandquist	Tuerk	Weaver
Schlickman	Wall	Williams
Shapiro	Walsh, R. A.	Wolbank
Simmons	Walsh, Wm. D.	Wolf, J. J.
Stolle	Warman	Wright
Telczer	Washburn	Mr. Speaker

Yeas—84.

Those voting in the negative are:

Arrigo	Course	Kirie
Barry, Don	Downes	Krause
Bradley	Elward	Lenard
Brandt	Ewell	Shaw
Brinkmeier	Fary	Smith, F. J.
Caldwell	Houlihan	Yourell
Collins, O. G.	Keller	

Nays—20.

The motion prevailed.

And the House concurred with the Senate in the adoption of Senate Joint Resolution No. 67.

Ordered that the Clerk inform the Senate thereof.

RULINGS AND OPINIONS:

Opinion of the Attorney General of the State of Illinois, Dated January 22, 1971:

January 22, 1971

File No. S-260

Taxation:

Personal Property

Tax Exemption

Honorable Robert J. Lehnhausen
Director, Department of Local
Government Affairs
325 West Adams Street
Springfield, Illinois 62704

Dear Sir:

I have your recent letter wherein you state:

"The Department of Local Government Affairs is vested with certain statutory powers and duties relating to the assessment of property for property tax purposes, among which are the following:

* * * * *

"Pursuant to such statutory provisions, inquiries have been made by local assessment officers concerning the effect of the amendment to the Illinois Constitution, approved by referendum on November 3, 1970, prohibiting, as to individuals, the taxation of personal property by valuation.

"We would appreciate receiving your opinion as to the following:

* * * * *

"6. Is the personal property held by an individual trustee exempt from taxation if the beneficiaries or beneficial owners are individuals? Is the answer different if the property is held by a corporate trustee?

* * * * *

Furthermore, at page 100 of Volume 34 of Illinois Law and Practice is found the following statement:

> "In construing a statute to give effect to the legislative intent and purpose, the court should, if possible, give it a reasonable, sensible, practical, and commonsense construction even though such construction qualifies the universality of its language."

As indicated above, the personal property tax is a tax upon the personal property itself. The only logical conclusion then as to the meaning of the constitutional amendment (Article IX-A) is that if the effect of the tax would be directly upon an individual (as distinguished, for example, from a corporation) then such personal property tax is abolished.

Article IX-A of the Illinois Constitution of 1870 became effective January 1, 1971 and is as follows:

> "Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited as to individuals."

Turning now to the questions which you have asked I shall discuss them in order.

* * * * *

In your sixth question you inquired whether personal property held by an individual trustee is exempt from taxation if the beneficiaries or beneficial owners are individuals. Since the effect of the tax would be directly upon an individual beneficiary, such personal property would be exempt. The fact that the trustee is a corporation or an individual would make no difference."

* * * * *

Very truly yours,
ATTORNEY GENERAL.

Opinion of the Attorney General of the State of Illinois
Dated March 2, 1973:

WILLIAM J. SCOTT
Attorney General
State of Illinois
Springfield
March 2, 1973

To: All County Treasurers

Re: Exemption of individuals from payment of ad valorem personal property tax

Dear Sir:

On Thursday, February 22, 1973, the Supreme Court of the United States, acting on my petition, reversed the decision of the Supreme Court of Illinois and held that Article IX-A of the Illinois Constitution of 1870 abolishing the ad valorem tax on personal property owned by individuals is valid. *Lehnhausen* v. *Lake Shore Auto Parts Co., Inc.*, ... U. S. ..... (1973) (Case No. 71-685). With this decision, we are finally able to relieve the individual taxpayer of this State of the burden of the personal property tax.

Since you, as the Treasurer of your county have the task of implementing Article IX-A, I felt that the following information would be of assistance to you, both in determining future personal property tax liability and in making refunds of personal property taxes collected from individuals during the pendency of the litigation concerning Article IX-A.

Article IX-A provides in relevant part that ". . . the taxation of personal property by valuation is prohibited as to individuals". The effect of this provision is to abolish the ad valorem tax on personal property owned by individuals, while continuing the tax on personalty owned by corporations.

* * * * *

As I pointed out in my Letter of Opinion to Director Robert J. Lehnhausen of the Department of Local Government Affairs, Article IX-A abolishes the tax on personal property in those situations in which the tax directly affects property owned by an individual. Thus, not only the property of sole proprietors and of individual farmers is exempt from the tax, but also the personal property of a partnership, of a decedent's estate in which the heirs or legatees are individuals, and of a trust in which the beneficiaries or beneficial owners are individuals, since in each of these instances, the tax would fall on property owned by "a natural person or by two or more natural persons as joint tenants or tenants in common". Attorney General's Opinion No. S-260 (January 22, 1971).

Due to the litigation concerning the validity of Article IX-A, these individuals have been required to pay the tax on personalty for 1971 (payable in 1972), despite the fact that Article IX-A became effective on January 1, 1971. Since Article IX-A does create a valid exemption, all individuals who have paid the tax accruing during 1971 (payable in 1972) are entitled to a refund of the full amount of tax paid together with interest, deducting only the reasonable cost of administering the refund procedure. This would include individuals who did not pay the tax under protest as well as those who did. The existence of a valid exemption would obviate the need for a formal protest to protect an individual's right to a refund of personal property taxes accruing and paid after the exemption has become effective.

I hope that this information will facilitate the implementation of Article IX-A in your county.

Very truly yours,

/s/ WILLIAM J. SCOTT
William J. Scott
Attorney General
State of Illinois

Opinion of the State's Attorney of Cook County, Illinois
Dated December 28, 1970:

December 28, 1970

S. A. Legal Opinion No. 1340

President George W. Dunne
537 County Building
Chicago, Illinois 60602

Dear President Dunne:

A question has arisen as to whether the recently adopted amendment to the 1870 Constitution of the State of Illinois applies to personal property held for the benefit of natural persons in trusts, estates, guardianships, and conservatorships.

On November 3, 1970, the voters of Illinois approved the following amendment to the revenue article of the 1870 Constitution of the State of Illinois:

> "ARTICLE IX-A
>
> "Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals*."

The schedule for implementation of this amendment provides:

> "This amendment shall be effective January 1, 1971."

Resolution of the question depends upon the intention of the General Assembly as to the word "individual" when it submitted this proposed amendment to the electorate. Chapter 7½, Paragraph 2 of the Illinois Revised Statutes of 1969 provides:

> "The General Assembly in submitting an amendment to the Constitution to the electorate shall prepare a brief explanation of such amendment, a brief argument in favor of the same. . . . The minority of the General Assembly, if they so desire, may also prepare a brief argument against such amendment."

Pursuant to this statutory direction, the Seventy-Sixth General Assembly prepared such arguments. In the arguments in favor

of the proposed amendment, there is no indication that the proposed amendment would not apply to personal property held for the benefit of natural persons in trusts, estates, guardianships, and conservatorships.

However, the arguments against the proposed amendment (which were corrected, with specific reference to this matter) contain the following language:

> "That [personal property] which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes."

Thus, the clear import of this legislative explanation of the proposed amendment is that personal property held in a fiduciary capacity for the benefit of natural persons shall not be subject to the personal property tax.

Therefore, it is my opinion that the recently adopted constitutional amendment prohibits taxation by valuation of personal property held for the benefit of natural persons in trusts, estates, guardianships, and conservatorships. (The provision of the Constitution, approved December 15, 1970, which prohibits reinstatement of any abolished ad valorem personal property tax, has no effect upon this opinion.)

Very truly yours

EDWARD V. HANRAHAN
State's Attorney of Cook County

cc: P. J. Cullerton
Cook County Assessor

AFFIDAVITS OF MEMBERS OF THE ILLINOIS GENERAL ASSEMBLY.

Affidavit of former State Representative Bernard McDevitt, a member of the Seventy Sixth General Assembly of Illinois, who submitted the Corrected "Report of Special Joint Committees on Submission of Proposed Constitutional Amendment" which was attached to Petitioner's Second Amended Complaint as Exhibit 13, reading as follows:

AFFIDAVIT

Bernard McDevitt, being first duly sworn on oath, deposes and states as follows:

Affiant, a duly elected member of the 76th General Assembly of Illinois, was Chairman of the House Judiciary Committee and a member of the Special Committee appointed pursuant to SJR 43 of the 76th General Assembly to prepare, together with other members of the House and Senate serving on said Committee, a brief explanation, in argumentation form, of the proposed constitutional amendment adding Article IX-A to the Illinois Constitution of 1870 which would prohibit the taxation of personal property by valuation as to individuals. The original report prepared by the Special Committee contained a statement in the Arguments Against that the proposed amendment was discriminatory because it exempted from taxes personal property owned by natural persons but taxed personal property "*. . . which is owned by corporations, trusts, etc., . . .*"

Affiant further states it was never the intent of the General Assembly under the proposed constitutional amendment adding Article IX-A to the Illinois Constitution of 1870 to tax decedents estates, guardianships, conservatorships or the traditional form of trust under which the trustee manages and conserves the trust assets for the exclusive benefit of natural persons and not for the conducting of a business for profit.

Affiant further states that under the provisions of "*An Act to provide the manner of proposing amendments to the Constitution and submitting the same to the electors of this*

state", approved March 14, 1877, the General Assembly could not and would not allow a mis-statement of exemption or claim of exemption to be set forth in either the Explanation, Arguments in Favor of or Arguments Against the proposed Constitutional Amendment to add Article IX-A to the 1870 Constitution of Illinois.

Affiant further states that in order to express the intent of the General Assembly that personal property held in a fiduciary capacity for the benefit of natural persons was to be exempt from taxation, the joint committee prepared a corrected report. The corrected report was reexecuted by the members of the Special Committee on constitutional amendments appointed pursuant to SJR 43 and the corrected report was adopted by both the House of Representatives and Senate of the 76th General Assembly. Said corrected report in the Arguments Against expressly stated as a fact *"That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes. * * *"*

Affiant further states as is shown by the May 15, 1969 Senate Journal proceedings that SJR 30, as amended was approved by the Senate of the 76th General Assembly by a vote of 46 yeas, 3 nays and was thereafter approved, as is shown by the June 30, 1969 House Journal proceedings in the House of the 76th General Assembly by a vote of 171 yeas and 0 nays.

Affiant further states that of the 13 signers of the special report, 11 members voted "yea" on the adoption of SJR 30, as amended, one Senator was present and did not vote; and Sen. Terrel E. Clarke was the only member of the Committee voting "nay".

Affiant further states that the Arguments Against were not arguments by the minority of the General Assembly but were arguments prepared by members of the General Assembly who voted favorably for SJR 30, so that the electorate might by fully informed of the issue on which they were voting. The factual statements of exemption

contained in the pamphlet distributed to every elector in the state were true.

Further Affiant sayeth not.

/s/ BERNARD MCDEVITT
Bernard McDevitt

Subscribed and sworn to before me this 28th day of Sepember, 1976.

/s/ MARY M. OZANICH
(SEAL) *Notary Public*

Affidavit of Senator Terrel E. Clarke, attached to Petitioner's Second Amended Complaint as Exhibit C, reading as follows:

AFFIDAVIT

Terrel E. Clarke being first duly sworn on oath deposes and states as follows:

Affiant was a duly elected member of the 76th General Assembly of Illinois and was a member of the Special Committee appointed pursuant to SJR 43 of the 76th General Assembly to prepare, together with other members of the House and Senate serving on said committee, a brief explanation, in argumentation form, of the proposed constitutional amendment adding Article IX-A to the Illinois Constitution of 1870 which would prohibit the taxation of personal property by valuation as to individuals.

Affiant further states that Affiant was the only member of said Special Committee who had voted "nay" in either the Senate or House of the 76th General Assembly on the adoption of SJR 30 as amended.

Affiant further states that he voted "nay" on the adoption of said constitutional proposition by reason of the fact that he was a member and co-chairman of the Constitutional Study Commission appointed by the General Assembly, and was the chief sponsor of the bill developed by that commission to set up procedural guidelines for the operation of the constitutional convention voted by the people. It was the opinion of Affiant that it was not appro-

priate for the Legislature to be proposing constitutional amendments when a constitutional convention was due to convene. It was Affiant's belief that all constitutional propositions should be developed through the constitutional convention process.

Affiant, as a member of the Special Committee, appointed pursuant to SJR 43 of the 76th General Assembly, signed the corrected report which revised the statement reading *"That personal property which is owned by natural persons is exempted from taxes; that which is owned by corporations, trusts, etc. is subject to taxes."* to read *"That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes."*

Affiant further states that said factual correction was made to clearly inform the electorate that personal property taxes were being abolished on property owned by a natural person or held in a fiduciary capacity for the benefit of a natural person.

/s/ TERREL E. CLARKE
Terrel E. Clarke

Subscribed and sworn to before me this 27th day of September, 1976.

/s/ NETTIE V. TUREN
(SEAL) *Notary Public*

Affidavit of former Senator W. Russell Arrington, chief sponsor and President Pro Tem and Majority Leader of the Illinois Senate, proposing Senate Joint Resolution No. 30, attached to Petitioner's Second Amended Complaint as Exhibit D, reading as follows:

AFFIDAVIT

W. Russell Arrington, having first been duly sworn, on oath deposes and says that during the 68th Illinois General Assembly, he served as a member of the Illinois Senate and as President Pro Tempore and Majority Leader; that he was the principal sponsor of Senate Joint Resolution 30 which, upon approval by the voters in the November 1970 general election, became Article 9a of the Constitution of the State of Illinois; that he is familiar with the provisions of said article; that by use of the phrase "as to individuals", he intended, as sponsor, that all natural persons should be relieved of the burden of the tax on personal property, even if their property were held in trust and whether or not such persons happened to be the beneficiaries of trusts; that he represented in speeches on the floor of the Senate that the intention of Senate Joint Resolution 30 was to relieve natural persons of the burden of personal property tax; that he, in sponsoring the measure and in voting for it, so intended; and that it is his belief that the members of the Senate who voted unanimously, save one, in favor of Senate Joint Resolution 30, must have intended to relieve natural persons of the burden of the tax on personal property whether or not they happen to be trust beneficiaries.

/s/ W. RUSSELL ARRINGTON
W. Russell Arrington

Subscribed and sworn to before me this 21st day of September, 1976

/s/ MARION E. MEYERS
(SEAL) *Notary Public*

Affidavit of former Senator Thomas A. McGloon, Minority Leader of the Illinois Senate proposing Senate Joint Resolution No. 30, attached to Petitioner's Second Amended Complaint as Exhibit E, reading as follows:

AFFIDAVIT

Thomas A. McGloon, having first been duly sworn, on oath deposes and states that he was Minority Leader of the Illinois Senate in the 68th General Assembly (calendar years 1969-1970) of the Illinois General Assembly and that he proposed the amendment to Senate Joint Resolution 30 limiting the abolition of the personal property tax to read "as to individuals"; that his intention as the sponsor of said amendment was to restrict the abolition of personal property tax so that natural persons would be relieved of the burden of the tax on personal property, however held; that the end result would thus be the abolition of the burden of such tax on all living, breathing, natural persons; that he represented in speeches on the Senate floor to the members of the Senate that such was his understanding of the effect of his amendment to the Senate Joint Resolution 30; and that the other members of the Senate who unanimously voted in favor of such amendment with the exception of one Senator who voted no, clearly should have understood that the amendment would have the effect, should it become law, of removing from natural breathing, living persons the burden of personal property tax.

/s/ THOMAS A. MCGLOON
Thomas A. McGloon

Subscribed and sworn to before me this 17th day of September, 1976.

/s/ WILLIAM LEE MARSH
(SEAL) *Notary Public*

Affidavit of former Senator William C. Harris, a co-sponsor of Senate Joint Resolution No. 67, attached to Petitioner's Second Amended Complaint as Exhibit L, reading as follows:

AFFIDAVIT

William C. Harris being first duly sworn on oath deposes and states as follows:

I was a duly elected member of the Senate of the 76th General Assembly of Illinois.

I was a co-sponsor of SJR 30 which proposed to add Article IX-A to the Illinois Constitution of 1870 to prohibit the taxation of personal property by valuation as to individuals.

I voted favorably on May 7, 1970 on the adoption of the corrected report submitted by the Special Committee on Submission of The Proposed Constitutional Amendment pursuant to *SJR 43*, which corrected report stated in part as follows: *"That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc. is subject to taxes."*

I was a co-sponsor of *SJR 67* which was adopted by the Senate on May 19, 1970, and which stated in part: ". . . *that, by the use of the phrase 'as to individuals', this General Assembly intended to mean a natural person, or two or more natural persons as joint tenants or tenants in common."*

SJR 67 was never intended to be exclusive of or to supplant the report of the Special Committee prepared pursuant to SJR 43 which previously had been unanimously adopted and approved by the Senate.

It was the intent of the 76th General Assembly in proposing *SJR 67* to insure that natural persons were relieved of the burden of personal property taxation, regardless of the manner in which their property was held, whether held outright, or by a fiduciary for their benefit, or in joint tenancy, or in tenancy in common. The fact is that, as a member of the General Assembly, I intended to ex-

clude individuals from personal property taxation from any category that individuals might be deemed by a court; and to include corporations in personal property taxation in all categories of personal property taxation. Let me restate the matter as succinctly and simply as possible. We wanted to except individuals from all categories of personal property taxation and include corporations in every way possible.

Further Affiant sayeth not.

/s/ WILLIAM C. HARRIS
William C. Harris

Subscribed and sworn to before me this 29th day of September, 1976.

/s/ MARGARET K. GRANEY
(SEAL) *Notary Public*

Stipulation, filed September 24, 1976, entered into by and between the parties by their respective counsel, which Stipulation, exclusive of caption and signatures, reads, in part, as follows:

"STIPULATION."

"It is hereby stipulated and agreed to by and between the respective parties hereto by their respective counsel:

(1) Plaintiffs are only claiming exemption of traditional forms of trusts, i.e., a trust created by will, deed, agreement, declaration or other written instrument, the object of which is to hold, conserve and manage trust assets, with incidental powers, for the benefit of natural persons, and not for the conducting of a business.

(2) Of the 102 counties in the State of Illinois, only the counties of Winnebago, Boone, Lake, Kane, DuPage, Sangamon and Cook have ever (prior to 1975) assessed or collected ad valorem taxes on personal property (other than bank stock) held in trust for the benefit of natural persons; and even in those Counties, the assessment practices have not been uniformly applied."

Order entered on December 3, 1976 by the trial Judge, F. Emmett Morrissey, reading as follows:

ORDER

This Matter coming on to be heard on the State's Attorney's motion to dismiss the second amended complaint herein, and the Court having considered the briefs, exhibits, and documents received in evidence, and having heard oral argument on behalf of counsel for the parties, and being fully advised in the premises;

IT IS HEREBY ADJUDGED, AND DECREED that the defendants' motion to strike and dismiss Count I of plaintiff's second amended complaint be, and the same hereby is, dismissed insofar as the trust created by R. B. Robinson for the benefit of her minor granddaughter, which said trust is declared to be exempt from personal property taxation under the opinion of the Illinois Supreme Court in *Hanley* v. *Kusper*, 61 Ill. 2d 452; and the said R. B. Robinson is hereby ordered, adjudged, and decreed to be the appropriate class representative for all others similarly situated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all trusts created for the exclusive benefit of a minor be, and they hereby are, held to be exempt from personal property taxation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants' motion to dismiss Count II be, and the same hereby is, sustained on the following grounds:

(a) Public Act 78-1250 [Ill. Rev. Stat. 1975, ch. 120, § 500.21(b)] is unconstitutional, illegal, null, and void for failure of the General Assembly to concurrently enact a replacement tax as required by § 5(c) of Article IX of the 1970 Illinois Constitution;

(b) The memorandum of the Director of the Department of Local Government Affairs, issued under date of October 14, 1974, was null and void, and not binding on the defendants herein; and

(c) The decision of the Illinois Supreme Court in *Hanley* v. *Kusper*, 61 Ill. 2d 452, is *res judicata*.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the alleged cause of action set forth in Count II of plaintiff's second amended complaint be, and the same hereby is, dismissed.

Supreme Court, U. S.
FILED
AUG 29 1978
MICHAEL RODAK, JR., CLERK

No. 77-1637

In the

Supreme Court of the United States

OCTOBER TERM, 1977

R. B. ROBINSON, Individually and as next of Friend of C. K. ROBINSON, a Minor, and in a Representative Capacity on behalf of all settlors and natural person beneficiaries of trusts,

Petitioner,

vs.

STANLEY T. KUSPER, JR., County Clerk of the County of Cook, et al.,

Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Illinois

BRIEF FOR RESPONDENTS IN OPPOSITION

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

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R. B. ROBINSON, Individually and as next of Friend of C. K. ROBINSON, a Minor, and in a Representative Capacity on behalf of all settlors and natural person beneficiaries of trusts,

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BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT

The Statement as presented in the instant Petition for a Writ of Certiorari is accurate, but incomplete in certain essential respects. The following statement will contain those essential omissions of fact.

On November 3, 1970, the voters of Illinois approved the inclusion of Article IX-A in the 1870 Constitution, which prohibited the taxation of personal property by valuation as to individuals.

Six weeks later, December 15, 1970, the Illinois Constitution of 1970 was approved by the people of Illinois and included Article IX, Section 5(b), which carried over into the new Constitution the prohibition of Article IX-A of the 1870 Constitution of personal property taxation as to individuals.

The constitutionality of this prohibition on the taxation of personal property as to individuals was initially challenged in *Lake Shore Auto Parts Co.* v. *Korzen,* 49 Ill. 2d 137 (1971.) The Illinois Supreme Court viewed Article IX-A as simply promoting a policy of freeing one set of property owners from the burden of a tax imposed upon another set and therefore held that this discrimination violated the equal protection clause of the fourteenth amendment, 49 Ill. 2d at 151.

That decision, however, was reversed by this Court in *Lehnhausen* v. *Lake Shore Auto Parts Co.,* 410 U.S. 356 (1973.) In concluding that equal protection standards were not violated, this Court observed at p. 364.

> "Approval of the treatment with that separateness which distinguishes public service corporations from others: *ibid.* leads us to conclude in the present cases that making corporations and like entities, but not individuals, liable for *ad valorem* taxes on personal property does not transcend the requirements of equal protection."

A problem was created by this language of Mr. Justice Douglas, who was speaking for a unanimous Supreme Court. The phrase "corporations and like entities" was uncertain in definition and created confusion in to which entities were still properly subject to personal property taxation. Upon remand to the Illinois Supreme Court for further proceedings, the parties and other interested persons were directed to submit memoranda to the court stating their views as to the interpretation of the United States Supreme Court's opinion. Among those submitting memoranda was William R. Dillon, as attorney for *amici curiae,* the members of the Corporate Fiduciaries Association of Illinois. Mr. Dillon, who is also one of the attorneys for the petitioner in the present cause, filed a lengthy memorandum entitled "Suggestions in the Nature of a Brief" and later filed a "Supplement to his Suggestions in the Nature of a Brief."

This court, after considering all the memoranda filed delineated the types of property still subject to personal property taxation;

> "The personal property thus left subject to taxation under Article IX-A includes the following categories of ownership; partnerships, limited partnerships, joint ventures, professional associations and professional service corporations. Trustees and other fiduciaries, whether corporate or not, do not own property as natural persons, and they were not exempted from taxation by Article IX-A. Bank stock, like other shares of any other corporation, is exempt only when owned by a natural person or by two or more natural

persons as joint tenants or tenants in common." *Lake Shore Auto Parts Co.* v. *Korzen*, 54 Ill. 2d 237, 239 (1973).

Within a week after the April 25, 1973 opinion of the Illinois Supreme Court on remand in *Lake Shore*, attorney William R. Dillon (who, as noted earlier, represents the present petitioner) filed a class action complaint entitled *Hanley* v. *Kusper* on behalf of thirteen plaintiffs representing various classes of fiduciaries, trustees and individual beneficiaries of fiduciary relationships. The basic thrust of their lawsuit was that Article IX-A was intended to exempt personal property held for individuals by trustees and other fiduciaries.

In determining the validity of the *Hanley* complaint, the Illinois Supreme Court first considered defendants' contention that the earlier decisions of the court in *Lake Shore* were fully determinative of the *Hanley* issues under the doctrine of *stare decisis*:

> "It is true that the basic contentions now advanced were before the court in the earlier cases, although perhaps without some embellishments and refinements that are now included. It is true that the 'legislative' materials now emphasized were before us when those cases were decided. Nevertheless, because of the continuing importance of the question, we have decided to examine once more the interpretive materials and the arguments advanced in favor of a construction of Article IX-A that would exempt from taxation all personal property held by trustees for the benefit of individual natural persons." *Hanley* v. *Kusper*, 61 Ill. 2d 452, 456-457 (1975).

In rejecting plaintiffs' contention that all trust and fiduciary arrangements for the benefit of natural persons are not exempt from personal property taxation, the *Hanley* court carefully and fully examined the legislative history of Article IX-A, including Senate Joint Resolutions 30, 43 and 67. The court noted that when the "arguments against" Article IX-A were originally proposed, they included the statement that property held in trust would be subject to personal property taxation. However, the court also noted that a later corrected report substituted the following language:

> "That which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes." 61 Ill. 2d 458-459.

In the court's view, however, this was not a sufficient indication that the 1969 General Assembly, in proposing Article IX-A, intended to exempt trusts from personal property taxation:

> "The plaintiffs would have us look only at the statement contained in the minority argument against the amendment which they repeatedly describe as the "Explanation" of Article IX-A. But the explanation of the amendment which is required to be printed on the face of the ballot is obviously not the same as the argument against it, which, under the statute may be prepared by the minority 'if they so desire.' In our opinion the court is not justified in relying upon arguments against a proposed constitutional amendment 'as seen by the minority' to determine its meaning after adoption. A precedent so holding would be mischievous in the opportunity it would afford a minority to frustrate the purpose of the General Assembly and the voters. We are not aware of any opinion of this court which has countenanced such a reliance." 61 Ill. 2d at 459-460.

The court focused instead on the meaning of the "Explanation of Amendment" which was printed on the bal-

lot and which none of the plaintiffs analyzed. That explanation stated that the abolition of personal property tax "would not affect the same tax levied against corporations and other entities not considered in law to be individuals." Since trustees are not "considered in law to be individuals" and since personal property taxes had always been levied against the trustee and not the beneficiary, the court was unwilling to believe that the General Assembly regarded a tax levied against a bank as trustee as a tax "levied against an individual." 61 Ill. 2d at 460. Additionally, the court noted that plaintiffs tended to ignore the specific explanation of the phrase "as to individuals" contained in Senate Joint Resolution No. 67 and the emphasis which that resolution placed upon ownership by "a natural person, or two or more natural persons as joint tenants or tenants in common." 61 Ill. 2d at 460-461.

It was also observed in *Hanley* that neither a trustee nor a beneficiary owns property as a natural person does. Instead, like a corporation, partnership and unincorported association, a trust is a legal abstraction created to enable natural persons to achieve results not otherwise possible if they owned property as natural persons. 61 Ill. 2d at 461. Consequently, the court again rejected the claim that all personal property held in trust for natural persons is exempt from taxation. 61 Ill. 2d at 463.

However, the court did decree that there are certain situations where property held by fiduciaries can fairly be said to have been intended to be exempt from taxation. Such situations involve instances where the natural person who owns the property is "prevented by law from dealing with it as a natural person." 61 Ill. 2d at 463. Specific examples listed in the *Hanley* opinion were instances involving estates, and property held by a minor

or an incompetent. The following rationale for exemption of these types of property was provided by the court:

> "In each of these situations the fiduciary relationship comes into being because the law prevents a particular class of natural persons (heirs or legatees of decedents, incompetents or minors) from exercising property rights that are available generally to other natural persons. These situations in our opinion, are distinguishable from voluntary fiduciary relationships created to accomplish results that could not be achieved so long as the property is owned by a natural person. To the extent thus indicated, our decision in *Lake Shore Auto Parts Co.* v. *Korzen,* 54 Ill. 2d 237 (1975) is overruled." 61 Ill. 2d at 463.

However, the trust industry in Illinois was not satisfied with the determination in *Hanley* that voluntary fiduciary relationships were still subject to personal property taxation. But rather than seeking certiorari in this Court, its counsel, William R. Dillon, filed yet two more lawsuits: the instant cause and *American National Bank* v. *Kusper* which were consolidated in the trial court as well as the Illinois Supreme Court.

However, once again the Illinois Supreme Court reiterated its position that voluntary fiduciary relationships are properly subject to taxation. *American National Bank and Trust Co.* v. *Kusper,* 69 Ill. 2d 374 (1978) The Court pointedly noted that "the appeals now before us mark the third occasion on which we have been asked to construe Article IX-A of the 1870 Constitution as applied to fiduciaries." 69 Ill. 2d at 386 and "although their approach is somewhat different, the plaintiffs in these consolidated appeals are again asking for a reconsideration of the conclusions reached in the *Lake Shore* and *Hanley* cases with respect to the taxability of personal property held by a fiduciary." 69 Ill. 2d at 389.

With specific reference to the *Robinson* case now before this Court, the Illinois Supreme Court observed:

> "Count II of plaintiff's amended complaint in No. 49267 involves essentially the same questions previously raised in *Hanley* with regard to the intent of the General Assembly when it proposed Article IX-A and the content of the informational pamphlet concerning the proposed amendment which was mailed to the referendum thereon. It is unnecessary to re-examine these matters here. We did not then and we do not now agree with plaintiff's argument that the information given to voters prior to the referendum on Article IX-A was false and misleading, and we likewise find no merit in the allegations that her right to vote would be unconstitutionally abridged unless Article IX-A is construed in the manner she proposes. We accordingly hold that the trial court did not err in granting defendants' motion to dismiss Count II of plaintiffs' second amended complaint in Cause No. 49267." 69 Ill. 2d at 390.

It is from this adverse ruling that certiorari is sought from the Supreme Court.

ARGUMENT

I.

THE DECISION BELOW DID NOT DEPRIVE PETITIONER OF HER PROPERTY WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Petitioner contends that the Illinois Supreme Court, in refusing to give effect to the express representations made to petitioner and others by the Illinois General Assembly in its explanation of Article IX-A as sent to the voters of Illinois prior to referendum, deprived her and the members of the class she represents of their property without due process of law.

However, as indicated in *Thompson* v. *Commonwealth of Kentucky*, 209 U.S. 340, 346 (1908), there has been no violation of due process in this instance:

> "Due process of law does not assure to a taxpayer the interpretation of laws by the executive officers of a state as against their interpretation by the courts of the state, or relief from the consequences of a misrepresentation by either . . . . it is the province of the courts to interpret the laws of the state, and he who acts under them must take his chance of being in accord with the final decision. And this is a hazard under every law, and from which or the consequences of which we know of no security.

Consequently, merely because petitioner had a differing view of the meaning of Article IX-A than that later determined by the Illinois Supreme Court did not constitute a denial of any due process rights.

But aside from the due process question respondents take issue with and wish to respond to the contention of the petitioner that the explanation of Article IX-A as sent to the voters clearly indicated an intent to exempt trusts from personal property taxation.

The sole evidence proffered by petitioner which existed at the time Article IX-A was considered and approved by the voters of Illinois was the language of the "arguments against" Article IX-A which was included among the materials sent to all the voters prior to the referendum on Article IX-A:

> "It is discriminatory because . . . property . . . which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by a corporation, etc., is subject to taxes."

However, this same language has been repeatedly relied upon in prior related litigation by William R. Dillon, one of the attorneys for petitioner Robinson in support of the same argument proffered by him here. In *Hanley* v. *Kusper*, 61 Ill. 2d 452 (1975) the Illinois Supreme Court addressed itself squarely to this issue:

> "The plaintiffs would have us look only at the statement contained in the minority argument against the amendment which they repeatedly describe as the "Explanation" of Article IX-A. But the explanation of the amendment which is required to be printed on the face of the ballot is obviously not the same as the argument against it, which, under the statute, may be prepared by the minority "if they so desire." In our opinion the court is not justified in relying upon arguments against a proposed constitutional amendment "as seen by the minority," to determine its meaning after adoption. A precedent so holding

> would be mischievous in the opportunity it would afford a minority to frustrate the purpose of the General Assembly and the voters. We are not aware of any opinion of this court which has countenanced such a reliance." 61 Ill. 2d at 459-460.

The court went on to note in *Hanley* that none of the plaintiffs analyzed the meaning of the key words of the "Explanation of Amendment" which was printed on the Article IX-A ballot and which stated that Article IX-A would not affect personal property tax "levied against corporations and other entities not considered by law to be individuals". Since personal property taxes had always been "levied against" trustees and since trustees are not "considered in law to be individuals" the court was unwilling to believe that the General Assembly regarded a tax against the Continental Illinois National Bank and Trust Company as trustee, for example, as a tax "levied against" an individual. (61 Ill. 2d at 460).

The court also went on to observe that the *Hanley* plaintiffs tended to ignore the specific explanation of the phrase "as to individuals" that was contained in Senate Joint Resolution No. 67 wherein an emphasis was placed upon ownership by "a natural person, or two or more natural persons as joint tenants or tenants in common." (61 Ill. 2d at 460-461).

Since neither a trustee nor a beneficiary owns property as a natural person does, the court in *Hanley* "again rejected the claim that all personal property held in trust for natural persons is exempt from taxation." (61 Ill. 2d at 461, 463). (The same determination was reached in the subsequent *American National Bank* v. *Kusper* case 69 Ill. 2d 374 (1978), which is the subject of this certiorari petition.)

Having failed to convince the court in *Hanley* v. *Kusper* that the materials sent to the voters for the referendum on Article IX-A evidenced a legislative intent to exclude from taxation personal property held by or owned by fiduciaries for the benefit of natural persons, attorney Dillon attempted a slightly different approach in the present case. He included the affidavits of members of the 76th General Assembly which allegedly support his contention that Article IX-A was intended by the 1969 legislature to relieve all natural persons of the burden of the tax on personal property even if their property were held in trust. (See petition for certiorari, p. 13)

However, as noted in Sutherland's treatise on *Statutory Construction* (4th Ed.) Vol. 2A § 48.12, pp. 214-215 these affidavits are not a proper indication of legislative intent:

> "Modern English practice, however, excludes the views of draftsmen from consideration as grounds on which to construe a statute. The reasons for this application of the general British rule excluding extrinsic aids was well stated by the Earl of Halsburg:
>
> > 'My Lords, I have more than once had occasion to say that in construing a statute I believe the worst person to construe it is the person who is responsible for its drafting. He is very much disposed to confuse what he intended to do with the effect of the language which in fact has been employed. At the time he drafted the statute, at all events, he may have been under the impression that he had given full effect to what was intended, but he may be mistaken in construing it afterwards just because what was in his mind was what was intended, though, perhaps it was not done.'
>
> In recognition that there is no necessary correlation between what the draftsman of the text of a bill understands it to mean and what members of the enacting legislature understand, and that the intent of the legislature is the determining consideration as compared to the views of draftsmen, their views are not generally considered proper grounds on which to base the interpretation on an act, in this country any more than in England."

But beyond the unpersuasive nature of these affidavits, it is abundantly clear that the meaning of Article IX-A was uncertain to both the 76th General Assembly and to the Sixth Illinois Constitutional Convention which considered the issue of personal property taxation. The lack of any legislative history as to Article IX-A's meaning is well illustrated by a colloquy which occurred during the June 19, 1970 debates at the Constitutional Convention involving Delegate Paul Elward who was also a member of the 76th General Assembly:

> "Mr. Karns: I want to be accurate, and I will ask Maurie (Maurice Scott) if this is accurate. In the original Resolution (S.J.R. 30) there is no legislative history. Is that correct, Maurie?
>
> Mr. Scott: That's right.
>
> Mr. Karns: The recent resolution, (S.J.R. 67), I assume, was an attempt to clarify what is meant by "individuals", but in certain respects only. Would that be accurate, Maurie?
>
> Mr. Scott: Right.
>
> Mr. Karns: And, as Delegate Elward will point out, I don't think this matter was—was it discussed in the house at all, Delegate Elward?
>
> Mr. Elward: The answer is no. It came in after the time for joint submission last year. It was not presented properly to the legislature." Vol. III. Report of Proceedings, Sixth Illinois Constitutional Convention p. 1913 (hereafter "Proceedings").

(See also Volume III, Proceedings p. 1910).

Additionally, there was no testimony presented to the Revenue Committee of the Constitutional Convention as to the meaning of the term "individual" within Article IX-A. (Vol. III, Proceedings, p. 1910).

Because of this lack of both legislative history and testimony before the Constitutional Convention's Revenue Committee the meaning of Article IX-A was unclear to the convention delegates, Mr. Elward included. He described Article IX-A as "one of those weird and wonderful products of the General Assembly that nobody is quite sure what it means. It was run through last year in haste." Vol. III, Proceedings, p. 2039. And as Delegate Stanley Johnson noted during the constitutional debates on June 25, 1970:

> "No, I would not, Delegate Elward. We would agree to eliminating the words "or not imposed" and "or imposed" but I am surprised you would ask me to put in the words "as to individuals" because you and I have discussed this many times and agreed that neither one of us knows what that means." Vol. III, Proceedings, p. 2049.

This uncertainty as to the meaning of Article IX-A was also evidenced during a colloquy between Delegates Leahy and Strunck later that same day, June 25, 1970:

> "Mrs. Leahy: I have a question for Delegate Strunck, I think there has been quite a bit of testimony that the General Assembly was not clear as to what they meant when they used the word "individuals". I thought there was testimony that even the resolution that passed a year later—or several months later—didn't clear up all that ambiguity. Therefore, I have real problems with your introducing this ambiguous word. Would you tell me what you mean by "individual"?

> Mr. Strunck: Answering your question, Delegate Leahy, I can only say that this is the word that the voters are going to vote upon in November, and I think the voter is entitled to vote as he sees fit on his interpretation of the word "individual". I have heard all sorts of interpretations of what the word "individual" means or can be construed to mean, but I think if this is the language of the proposed amendment, this is the language we should stay with.
>
> Mrs. Leahy: Then you are not sure—it will mean whatever the court decides it means after the amendment carries, if it does carry in November.
>
> Mr. Strunck: Yes." Vol. III, Proceedings, p. 2055.

Admittedly, there were some convention delegates who believed that the term "individual" in Article IX-A was intended to mean all non-corporate entities. Indeed, Delegate Thomas G. Lyons contended during the debates of June 30, 1970 that "after this November there will be nothing else left on the personal property tax rolls except the personal property of corporations." Vol. III, Proceedings, p. 2147. Delegate Thomas McCracken was of a similar opinion and on August 8, 1970 even proposed an amendment that replacement taxes shall come "solely out of the proceeds of a statewide tax imposed only for that purpose exclusively against corporations." Vol. V, Proceedings, p. 3833. However disagreement with this proposal was immediately voiced during the debates by Delegate Mullen:

> "I have a question for Delegate McCracken. It is assumed, I think, that after November 3 Delegate McCracken is assuming the only personal property tax that will remain will be that on corporations. I think there is a difference of opinion. . ." Vol. V, Proceedings, pp. 3833-3834.

Delegate McCracken responded by stating:

> ". . . I don't think the supreme court is going to interpret the term "individual" as it is used in the November referendum, in a narrow sense, I think it's going to be interpreted as applying broadly to all types of property owned by natural persons." Vol. V, Proceedings, p. 3834.

Mr. McCracken was wrong in his assessment of the future judicial treatment of Article IX-A. He was also unsuccessful in limiting the replacement tax solely to corporations. After consulting with other Constitutional Convention delegates overnight, Mr. McCracken himself proposed on the next day, August 9, 1970, that the replacement revenue be obtained from "statewide taxes on the class or classes of persons relieved of the burden of such *ad valorem* taxes." (See Journal for August 9, 1970, Vol. I, Proceedings, p. 577). In explaining the reason for the change in the replacement tax language McCracken noted that when he had used the term "corporations" in his proposal the day before he "was under the assumption that the supreme court would interpret the term 'individual' very broadly, and, in fact, only corporations would be left on the roll." Vol. V, Proceedings, p. 3888. However, he was convinced overnight that the term "individual" might be defined more restrictively:

> "We have provided for the possibility that either it does not pass—that is, the referendum does not pass —or if the referendum does pass, that the court does not interpret the term "individual" broadly. We have provided for both contingencies, and that's the reason why we have used the words 'class or classes.' We intend there, not subclasses—that is, not different types of corporations—but corporations versus unincorporated businesses, if in fact, unincorporated businesses are not exempted as a result of the November referendum or the referendum does not pass." Vol. V, Proceedings, p. 3888.

Indeed, Mr. McCracken even allowed for the possibility that trusts might be subject to taxation!:

> "I am not sure of the supreme court's interpretation of the term 'individual', but I may be talking about sole proprietors, I may be talking about partnerships, I definitely am talking about corporations, I may be talking about trusts, and I may be talking about estates. That, I think, exhausts the possibilities." Vol. V, Proceedings, p. 3889.

If, as petitioner contends, the 76th General Assembly intended to remove the burden of taxation from personal property held by fiduciaries for the benefit of natural persons, then that intention was not clearly manifested to the members of the Constitutional Convention who repeatedly stated during the debates that they were uncertain as to the definition of an "individual" within the meaning of Article IX-A.* And if the members of the Constitutional Convention, who carefully studied and extensively debated the issue of personal property taxation, were unclear as to the meaning of Article IX-A, it cannot be credibly argued that the voters of Illinois, who approved Article IX-A in November, 1970, intended

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*Gerhard Casper, in a paper prepared for the Illinois State Chamber of Commerce dated October, 1972, which was included in two-volume collection of materials relating to the replacement of the Illinois personal property tax, concurs with this assessment: "Neither the General Assembly nor anybody else was exactly clear about what Senate Joint Resolution No. 30 meant when referring to abolition of personal property tax "as to individuals." (p. A-2).

to exempt the personal property in question from taxation.

Rather, the activities of both the 76th General Assembly in drafting Article IX-A, as well as the Constitutional Convention in considering the issue of the taxation of personal property, point to the conclusion that the exact meaning of Article IX-A was unclear and it was left to the courts for resolution. As has been noted by Paula Wolff and Wayne W. Whalen, who served as Chairman of the Committee on Style, Drafting and Submission at the Constitutional Convention:

> "The political possibilities offered by subsequent judicial review were not lost on the delegates to the Sixth Illinois Constitutional Convention. Anticipation of judicial review provided the delegates with the opportunity to draft intentionally ambiguous provisions for inclusion in the constitution. The delegates envisioned that these ambiguities would ultimately be resolved by the courts." Vol. XXII, De Paul Law Review 63, 65 (1972).

In short, it was intended by the Constitutional Convention, which had received no guidance from the General Assembly as to the meaning of Article IX-A, that IX-A "will mean whatever the court decides it means, after the amendment carries, if it does carry in November." (Delegate Leahy, June 25, 1970. Vol. III, Proceedings, p. 2055). The Illinois Supreme Court has determined, after a careful consideration of the issue in *Lake Shore Auto Parts Co.* on remand, *Hanley* v. *Kusper* and *American National Bank* v. *Kusper*, that voluntary fiduciary arrangements for the benefit of natural persons are still subject to personal property taxation. Merely because plaintiff Robinson may have erroneously believed

in voting to approve Article IX-A that its ratification would erase the personal property taxation as to trusts does not constitute a violation of due process particularly when the only concrete evidence supporting her position is in the language *in opposition* to Article IX-A**

II.

A.

PETITIONER, IN FAILING TO RAISE THE ISSUE IN THE LOWER COURTS, HAS THEREBY WAIVED ANY ARGUMENT THAT THE ACTION OF THE ILLINOIS SUPREME COURT HAS UNCONSTITUTIONALLY IMPAIRED THE OBLIGATION OF CONTRACT.

Petitioner alleges that the action of the Illinois Supreme Court in relying upon Senate Joint Resolution No. 67, which was adopted by the Illinois General Assembly after the report concerning Article IX-A was prepared, and which, unlike the Article IX-A report, was never mailed to the Illinois electorate, constituted an impairment of the obligation of contracts in violation of Article I, Section 10 of the United States Constitution. (Petition for Writ of Certiorari, p. 16.)

Petitioner also maintains that this impairment of contract issue arose for the first time by reason of the judg-

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** Petitioner notes at pages 13 & 14 of her petition that the opinions of both the Attorney General and the Cook County State's Attorney have held that the General Assembly intended to exempt personal property in trust for the benefit of natural persons. However, under Illinois law such opinions are not binding, (*People* v. *Savaiano*, 66 Ill. 2d 7, 15-16 (1976); *Rogers Park Post No. 108* v. *Brenza*, 8 Ill. 2d 286, 292 (1956)) particularly when the Illinois Supreme Court later ruled to the contrary in *Lake Shore* on remand, *Hanley* v. *Kusper* and *American National* v. *Kusper*.

ment of the Supreme Court of Illinois in this cause. (Certiorari petition, p. 11.)

However, this assertion is erroneous and is rebutted by the very language of her certiorari petition. Indeed, it is noted at page 19 of that petition that the Illinois Supreme Court utilized Senate Joint Resolution No. 67 to determine the meaning of Article IX-A in the initial case wherein the constitutionality of Article IX-A was considered. (*Lake Shore Auto Parts Co.* v. *Korzen,* 49 Ill. 2d 137, 148 [1971]) and has continued to rely on it in its subsequent related opinions. (*Lake Shore Auto Parts* v. *Korzen,* on remand from the United States Supreme Court, 54 Ill. 2d 237, 239 [1973]; *Hanley* v. *Kusper,* 61 Ill. 2d 452, 460 [1975]; *American National Bank* v. *Kusper,* 69 Ill. 2d 374, 386, 390 [1978]).

William R. Dillon, one of the attorneys for the instant petitioner, has filed pleadings in the last three of these cases on behalf of the trust industry in Illinois. In each of these cases the issue of the propriety of the use of Senate Joint Resolution No. 67 in determining the meaning of Article IX-A has arisen. It therefore cannot be credibly maintained that the issue involving the impairment of petitioner's contract rights arose for the first time in the most recent related Illinois Supreme Court opinion, *American National Bank* v. *Kusper,* which was consolidated with the present cause in that court.

In short, by failing to raise the issue in any prior proceeding in Illinois, thereby precluding the Illinois Supreme Court from considering the question, petitioner's counsel is barred under the doctrine of waiver from raising the issue now for the first time. As was observed in *United Railways & Electric Co. of Baltimore* v. *West,* 280 U.S. 234, 248-249 (1930):

> "The commission in the present case, accordingly, included the amount in the valuation and made no attack upon the item in the courts below, where it passed as a matter not in dispute. The item is now challenged by counsel for the commission in this court, and other objections to the valuation are suggested, likewise for the first time. We do not find it necessary to consider this challenge or these objections, for, if they ever possessed substance, they come too late."

See also, *Weade* v. *Dichmann, Wright, & Pugh, Inc.,* 337 U.S. 801, 808 (1949); *Denver Union Stock Yard Co.* v. *U.S.* 304 U.S. 470, 484 (1938.)

Consequently, petitioner is precluded under the waiver doctrine from raising for the first time in this court the impairment of contract issue when it could have readily been raised in the courts below.

II.

B.

ASSUMING ARGUENDO THAT PETITIONER DID NOT WAIVE THE ISSUE, THERE NEVERTHELESS WAS NO IMPAIRMENT OF THE OBLIGATION. OF CONTRACT.

Article I, Section 10 of the United States Constitution provides in part that: "No State shall . . ., pass any . . . law impairing the obligation of contracts."

Petitioner contends at page 20 that Senate Joint Resolution No. 67, which was passed subsequent to the approval of Article IX-A by the General Assembly for submission to the voters of Illinois impaired the obligation of contract.

Even assuming *arguendo* that this issue was not waived for failure to present it to the lower courts in this cause, the contention is nevertheless totally without basis.

As noted at page 7 of her certiorari petition, Senate Joint Resolution was adopted by the Illinois Senate on May 19, 1970 (Appendix p. A. 44) and concurred in by the House on May 29, 1970 (Appendix p. A. 45)

However, it was not until nearly seven months later that petitioner created the irrevocable trust in issue for the benefit of her son and daughter. (Petition, p. 10)

This court has often noted that a contract can be impaired within the meaning of Article I, Section 10 only when it is affected by a law passed subsequent to the time the contract became effective As was observed in *Bacon* v. *State of Texas,* 163 U.S. 207, 216 (1896):

> "Where the federal question upon which the jurisdiction of this court is based grows out of an alleged impairment of the obligation of a contract, it is now definitely settled that the contract can only be impaired, within the meaning of this clause in the constitution, and so as to give this court jurisdiction on writ of error to a state court, by some subsequent statute of the state which has been upheld, or effect given it by the state court.

See also *Coolidge* v. *Long,* 282 U.S. 582, 595 (1931); *Columbia Ry. Gas & Electric Co.* v. *State of South Carolina,* 261 U.S. 236, 244 (1923).

Furthermore, the authority of this court under the impairment of the obligations of contracts clause does not reach mere errors committed by a state court when passing upon the validity or effect of a contract under the laws in existence when it was made. *Cross Lake Shooting & Fishing Club* v. *State of Louisiana,* 224 U.S. 632, 637 (1912).

Consequently, since Senate Joint Resolution No. 67 was enacted prior to the creation of the irrevocable trust of the petitioner, its utilization by the Illinois Supreme Court in defining the meaning of Article IX-A cannot be considered as an impairment of the obligation of contract.

CONCLUSION

For the foregoing reasons respondents respectfully request that the instant Petition for a Writ of Certiorari to the Supreme Court of Illinois be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1637

R. B. ROBINSON, INDIVIDUALLY AND AS NEXT OF FRIEND OF C. K. ROBINSON, A MINOR; AND IN A REPRESENTATIVE CAPACITY ON BEHALF OF ALL SETTLORS AND NATURAL PERSON BENEFICIARIES OF TRUSTS,

Petitioner,

vs.

STANLEY T. KUSPER, COUNTY CLERK OF THE COUNTY OF COOK, ET AL.,

Respondents.

REPLY.

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REPLY.

I.

RESPONDENT FINDS NO SUPPORT IN THE RECORD FOR HIS CONTENTION THAT THE ILLINOIS SUPREME COURT'S OPINION DID NOT DEPRIVE PETITIONER OF HER PROPERTY WITHOUT DUE PROCESS OF LAW.

The respondent's brief in opposition on the issue of due process is predicated exclusively on the legal principle that a mere difference of opinion in the interpretation of a statutory enactment does not constitute a violation of due process, which he attempts to support solely by extensive quotations from the prior opinions of the Illinois Supreme Court with secondary references to statutory rules of construction and the debates of

the Illinois Constitutional Convention whose proceedings were terminated prior to the mailing of the official Report to the people stating that trusts were exempt.

The respondent endeavors to support his claim that Petitioner's Statement of the Case is "incomplete in certain essential respects." by quoting exclusively from the prior Illinois Supreme Court's opinions which relied on Senate Joint Resolution 67, without any reference to supporting factual data in the record. It is this very inability to square the opinions of the Illinois Supreme Court with the record which leads to petitioner's claim that the court's action was arbitrary and capricious. Nowhere does the respondent deny or refute petitioner's factual allegations which are the basis of her claim, namely that:

1) It was the Illinois General Assembly (not a minority thereof) which refused to approve the official Report until it had been corrected to read that personal property "owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, [trusts,] etc., is subject to taxes" (added language underlined, deleted language in brackets).

2) The approved corrected Report, pursuant to the requirements of law, was published in pamphlet form (Blue Pamphlet) by the Illinois Secretary of State and mailed to every registered voter prior to the general election of November 3, 1970.

3) Senate Joint Resolution 67 was adopted by a *minority* of the General Assembly and did not purport to be adopted either pursuant to or in accordance with Section 2 of Article XIV of the Illinois Constitution of 1870 or with the provisions of the act regarding the manner of submitting constitutional amendments to the voters.

4) Senate Joint Resolution 67 was adopted subsequent to the adoption of the corrected Report by the Illinois General Assembly.

5) Senate Joint Resolution 67 was never mailed to the electorate and the contents of said resolution were never made known to petitioner or to the electorate in any manner whatsoever prior to the election at which Article IX-A was adopted by the voters.

6) Petitioner read the official pamphlet mailed to her and other Illinois voters which specifically stated in the portion of the pamphlet devoted to arguments against the proposed amendment, that personal property "owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes;".

The respondent seeks to find his sole refuge in statements emanating from the Illinois Supreme Court which have no foundation in the facts and are nowhere supported in the record.

It is apparent from the Illinois Supreme Court's statement in the instant case that "It is unnecessary to reexamine these matters here." (*American National Bank and Trust Co.* v. *Kusper*, 69 Ill. 2d 374. See Appendix p. A. 17) that the error the Illinois Supreme Court persists in, and which deprives Petitioner of her property without due process of law, is the Court's continued reliance on Senate Joint Resolution 67. In the *Lake Shore Auto Parts Co.* v. *Korzen* decisions, the Illinois Supreme Court concluded in the language of Senate Joint Resolution No. 67 (A. 44-45) that "the meaning of Article IX-A is that *ad valorem* taxation of personal property owned by a natural person or by two or more natural persons as joint tenants or tenants in common is prohibited," (49 Ill. 2d 137 at 148 and 54 Ill. 2d 237 at 239) and therefore, concluded that "Trustees and other fiduciaries, . . ., do not own property as natural persons, and they were not exempted from taxation by Article IX-A" (54 Ill. 2d 237 at 239).

The Respondent's Brief In Opposition at pages 10 and 11 quotes from the opinion of the Illinois Supreme Court in

Hanley v. *Kusper*, 61 Ill. 2d 452 (1975) as to why the Illinois Supreme Court refused to rely on the Official Report of the Illinois General Assembly and instead relied upon the Explanation and Senate Joint Resolution No. 67 in construing Article IX-A as follows:

> ". . . [T]he court is not justified in relying upon arguments against a proposed constitutional amendment 'as seen by the minority' to determine its meaning after adoption". (Hanley v. Kusper, 61 Ill. 2d 452 at 460.)

The Illinois Supreme Court and the State's Attorney are in error.

First, they are mistaken when they refer to the statement as being an argument against "as seen by the minority". The entire Illinois General Assembly, and not just a minority thereof, refused to adopt a report which stated that trusts were taxable, and, instead, approved the report only after the report had been corrected to state that trusts were exempt from personal property taxation. The Illinois Supreme Court's reference to the arguments against portion of the report as being an argument advanced by a minority of the Illinois General Assembly is, therefore, clearly erroneous.

Second, it was erroneous for the Illinois Supreme Court to state that it cannot rely on arguments against the proposition *to determine its meaning after adoption*. The arguments against the proposal, as well as the explanation of the proposal and arguments in favor of the proposal were all submitted by the Illinois General Assembly to the electorate prior to the electorate's adoption of Article IX-A, and the entire "Blue Pamphlet" must be given effect in construing Article IX-A. Obviously, a proposition to amend the constitution is but a proposal proffered by the General Assembly to the electorate to either adopt or to reject as the electorate, by its vote, determines.

Third, the Illinois Supreme Court's statement that it is not justified in relying upon "arguments" shows a fundamental mis-

understanding of the nature of the argumentation form of presentation. The statement of the Illinois General Assembly that personal property "which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by a corporation, etc. is subject to taxes" is a clear and precise statement of fact devoid of any possible ambiguity. It was this factual statement from which the argument followed, namely, that the proposal was discriminatory because it exempted individuals and trusts for the benefit of individuals while continuing to tax corporations and like entities. For the Respondent to argue that "the meaning of Article IX-A was uncertain to . . . . the 76 General Assembly . . . ." and that there was a "lack of any legislative history as to Article IX-A's meaning. . . ." is directly contrary to the facts, and is contradictory of the official journals of both the House and Senate of the 76th Illinois General Assembly relating to the adoption of the corrected report, and is directly contradictory to the sworn Affidavits of both the Republican and Democratic leaders of the Illinois Senate (Appendix p. A 57-58) who were responsible for the introduction of the proposed constitutional amendment adding Article IX-A, and is directly contrary to the sworn Affidavit of the member of the Illinois House (Appendix p. A 53-55) who submitted the corrected report to the 76th Illinois General Assembly for its approval, all of which provide the strongest evidence that the Illinois General Assembly, as it specifically so stated, intended that trusts for the benefit of natural persons be exempt. See *TVA* v. *Hill*, ... U. S. ....., 57 L. Ed. 2d 117 (Advance Sheet No. 1) decided on June 15, 1978 wherein this Court recognized its duty to give effect to the plain intent of an Act of Congress.

It is important to note that the delegates to the constitutional convention obviously *did not have* available to themselves at their meetings of June 19, June 25, June 30, August 8 and August 9, 1970 copies of the official pamphlet as the same was not mailed to the voters until the first of September 1970,

at the earliest. Likewise, it is apparent that they could not have had the legislative record of the adoption of the corrected report, otherwise some reference would have had to have been made to it in their debates and there would have been no uncertainty as to the exemption of traditional trusts. In any event, what the constitutional convention delegates thought or did not think about the issue is wholly immaterial as to legislative intent and voter understanding, which alone are to be considered in construing constitutional amendments.

For the Illinois Supreme Court to conclude, in its present opinion and in three prior opinions, that personal property *"which is held in a fiduciary capacity for the benefit of natural persons"* is taxable, despite the General Assembly's statement to the contrary in the Blue Pamphlet sent to the voters, is to state that a coordinate branch of government purposely set out to mislead and misinform the petitioner.

The Brief In Opposition also relies on the Illinois Supreme Court's statement in *Hanley* v. *Kusper*, 61 Ill. 2d 452, at 460, that none of the Plaintiffs analyzed the key words of the Explanation of the proposed amendment which stated that Article IX-A would not affect personal property taxes "levied against corporations and other entities not considered in law to be individuals." Contrary to the Court's statement, the Petitioner read not only the explanation but the entire contents of the official Report and concluded that the obvious purport of the language in the explanation was that the exemption would not apply to the tax levied against corporations and other like business entities not considered in law to be individuals. In this respect, it should be noted that the "Explanation of the Amendment" in the official Report mailed to the electorate appeared at the end of the Report after the electorate had been advised that personal property "owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes;" (Appendix p. A. 39-44 at A. 43.) A traditional trust for a natural person whose purpose is not the operation of a business for profit cannot be said to be an entity comparable to a corporation.

For the reasons heretofore noted in the Petition for a Writ of Certiorari and in this Reply to the Brief In Opposition, we respectfully submit that the property of the Petitioner, and the property of all settlors and natural persons who are beneficiaries of trusts in Illinois have been taken without due process of law. If, as held by this Court in *Bouie* v. *Columbia*, 378 U. S. 347 (1964) where the defendants were deprived of due process of law by a decision of the Supreme Court of South Carolina which held that the acts of the defendants in remaining on the premises of another receiving notice to leave fell within a statute prohibiting "entry upon the lands of another. . . . after notice from the owner or tenant prohibiting such entry. . . .", then certainly, a person's due process rights have been violated where a person creates a trust after having been specifically advised by the legislature that trusts are exempt from personal property taxation and a State Court refuses to give effect to the expressed intent of the legislature and of voter understanding and holds such trusts not to be exempt.

II.

PETITIONER HAS NOT WAIVED THE IMPAIRMENT OF CONTRACT ISSUE AND PETITIONER'S CONTRACT RIGHTS HAVE BEEN IMPAIRED.

A. Petitioner Has Not Waived the Impairment of Contract Issue:

The Respondent urges that the Petitioner has waived her right to urge the impairment of contract issue.

The simple answer to the Respondent's contention is that the Petitioner herein was neither a party to nor represented by a party in any of the prior cases in the Illinois Supreme Court, none of the parties to the prior cases having created a trust in reliance on the Illinois General Assembly's statement that trusts for natural persons would be exempt if Article IX-A were adopted by the People of Illinois.

At page 20 of Respondent's Brief in Opposition, it is stated:

> "In short, by failing to raise the issue in any prior proceeding in Illinois, thereby precluding the Illinois Supreme Court from considering the question, *petitioner's counsel* is barred under the doctrine of waiver from raising the issue now for the first time." (Emphasis Added.)

The fact that Petitioner's counsel in this case was involved as an attorney in *Hanley* v. *Kusper*, 61 Ill. 2d 452, in which this Petitioner was not a party nor represented by a party in no way bars the Petitioner from raising the issue of impairment of contract herein. Nor can it be said that Petitioner should have raised this issue in the State Court in the instant case unless it can be said that Petitioner should have anticipated that the Illinois Supreme Court would hold trusts for natural persons not exempt from taxation despite the express statement of the Illinois General Assembly to the contrary. This is exactly what this Court held in *Bouie* v. *Columbia*, 378 U. S. 347 could not be anticipated, and was the very reason this Court held due process rights violated in *Bouie*.

We respectfully submit, therefore, that the issue of impairment of contract rights did arise for the first time by reason of the decision of the Illinois Supreme Court in the instant case, and that Petitioner is not barred from having this Court pass on such issue.

B. Petitioner's Contract Rights Have Been Impaired.

Petitioner, in her Petition For a Writ of Certiorari, noted that if the Illinois General Assembly had adopted Senate Joint Resolution No. 67 *subsequent to* December 23, 1970, when Petitioner created her trust in reliance upon the prior official Report of the Illinois General Assembly which stated that trusts for natural persons were exempt from personal property taxation under Article IX-A, that there would have arisen a classic issue of whether the Illinois General Assembly by subsequent legislative action had impaired the obligation of a contract.

Petitioner asserted, and reasserts, that a clear cut issue of impairment of contract remains where the subsequent legislative actions on which the Court relied and which gave rise to the impairment was in the form of a Resolution to which the Illinois Supreme Court gave the effect of law, and which was never made known to Petitioner or to the Illinois electorate. Unless citizens are to be charged, as a matter of law, with a knowledge of legislative action shown only on the official journals of state legislatures but not communicated or otherwise made known to its citizens, then such subsequent legislative action can be utilized in the future by legislative bodies as a form of entrapment for the unwary citizen who relies upon prior legislature action communicated to the electorate but negated by subsequent legislative activity not communicated to or made known to its citizens prior to the citizen taking action in reliance upon the prior legislative activity.

The fact that citizens are not charged with knowledge of legislative action shown only on the official journals of the State legislature has been recognized by the Illinois Supreme Court in *Worthy* v. *Bush*, 262 Ill. 560 (1914) when the Court stated at page 562:

> "It has never been the doctrine of this court that judicial notice will be taken of the contents of these legislative journals."

We respectfully submit that if a State legislature by such a course of action can evade the constitutional guaranty against impairment of contract, then the constitutional guaranty becomes meaningless.

Respondent's statement at page 22 of the Brief in Opposition that the authority of this Court does not reach mere errors committed by a state court when passing on the validity or effect of a contract under the laws in existence when it was made has no application whatsoever where subsequent legislative action is given effect by a Court which impairs the obliga-

tion of contract. The case cited in Respondent's Brief in support of this argument, *Cross Lake Shooting & Fishing Club* v. *State of Louisiana,* 224 U. S. 632 specifically holds to the contrary, noting at page 639 of its opinion that "when the State Court, either expressly or by necessary implication, gives effect to a subsequent law of the State whereby the obligation of the contract is alleged to be impaired, a Federal question is presented. In such a case it becomes our duty to take jurisdiction and to determine the existence and validity of the contract what obligations arose from it, and whether they are impaired by the subsequent law." (224 U. S. 632 at 639).

The Illinois Supreme Court, in construing Article IX-A, has refused to give effect to the prior official report mailed to the electorate, which specifically stated that trusts for natural persons were exempt, and, in so doing, had indisputably relied on the subsequently adopted Senate Joint Resolution No. 67, thereby giving it the effect of law.

Repeated decisions of this Court have held, that while decisions of state courts are entitled to great respect, this Court itself must construe the contract to determine whether or not legislation impairs the obligations of contract. In *Terre Haute & I. R. Co.* v. *Indiana,* 194 U. S. 579 (1904) this Court, in overruling the construction given to a charter by a state Court, concluded at page 587:

> "We are driven to a different construction of the charter, notwithstanding the deference naturally felt for the decision of a state court upon state laws."

Prior to reaching such conclusion, this Court had previously noted:

> "Therefore the question is properly here whether these statutes impaired the rights of the railroad under the Constitution of the United States. For in order to determine whether the later legislation impairs those rights, *this court must decide for itself what those rights were.*" (Emphasis Added) (194 U. S. 579 at 587.)

For similar decisions of this Court so holding, see: *New York Rapid Transit Corporation* v. *New York,* 303 U. S. 573, 593 (1938); *Columbia Railway, Gas & Electric Co.* v. *South Carolina,* 261 U. S. 236, 246, 247 (1923); *Yazoo & Mississippi Valley Railroad Company* v. *Adams,* 180 U. S. 41, 44 (1901); *Wilson* v. *Standefer,* 184 U. S. 399, 411, 412 (1902); and *Mobile & Ohio R. Co.* v. *State of Tennessee,* 153 U. S. 486, 492, 493 (1894).

As previously noted in the Petitioner's Petition for a Writ of Certiorari; this Court, on numerous occasions, has noted that if this Court were bound by decisions of State Courts construing contract rights and whether the same were impaired by subsequent legislation, there would never be a case in which this Court could pass on alleged impairment of such rights.

We respectfully request this Court to declare Senate Joint Resolution No. 67 unconstitutional, null and void as being subsequent legislative activity impairing the obligation of contract. In so doing, the Illinois Supreme Court will no longer be able to rely upon Senate Joint Resolution No. 67 in construing Article IX-A and will, we respectfully submit, be forced to give effect to the Official Report of the Illinois General Assembly which specifically advised the electorate that personal property which is "held in a fiduciary capacity for the benefit of natural persons is exempted from taxes" under Article IX-A. Only then will the clear legislative intent and voter understanding to exempt trusts for the benefit of natural persons have been realized.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. 77-1637

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Petitioner,

VS.

STANLEY T. KUSPER, County Clerk of the County of Cook, et al,

Respondents.

BRIEF OF THE STATE OF ILLINOIS AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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Petitioner,

vs.

STANLEY T. KUSPER, County Clerk of the County of Cook, et al,

Respondents.

BRIEF OF THE STATE OF ILLINOIS AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

The State of Illinois, by William J. Scott, Attorney General of Illinois, respectfully submits its brief in support of the Petition for a Writ of Certiorari as *amicus curiae.*

INTEREST OF THE STATE OF ILLINOIS AS AMICUS CURIAE.

On November 3, 1970, the voters of Illinois approved an amendment to the revenue article of the 1870 Illinois Constitution which prohibited "the taxation of personal property by valuation as to individuals." Prior to adoption, Illinois citizens were informed in an official Report by the Illinois General Assembly that the amendment exempted from taxation personal property which is "owned by or held in a fiduciary capacity for the benefit of natural persons," whereas personal property owned by corporations is subject to taxes. Thus, Illinois voters were clearly led to believe that assets held in trust for natural persons would be exempt from taxation. Subsequent to the mailing of this Report to the electorate, the General Assembly adopted Senate Joint Resolution No. 67, which defined the phrase "as to individuals" to mean "a natural person, or two or more natural persons as joint tenants or tenants in common." This Resolution was never mailed to, or considered by, Illinois citizens in voting for the constitutional amendment.

The recent reaffirmance by the Illinois Supreme Court that the Illinois General Assembly did not intend to exempt personal property held in trust for natural persons results from the Court's continued reliance upon Senate Joint Resolution No. 67 as an expression of legislative intention. Despite the official explanation of the amendment given to the electorate, the Court has never considered what Illinois voters understood and intended in adopting the constitutional amendment. This failure undermines the right of Illinois citizens to rely on the official publications of the State of Illinois, communicated to them pursuant to law, in determining the meaning of proposed amendments to the Constitution of Illinois so as to cast an informed vote on proposals presented to them.

ARGUMENT

Article XIV, § 2 of the Illinois Constitution provides that amendments to the constitution may be proposed by the General Assembly, but that such amendments must be approved by the voters of Illinois before becoming effective. An interpretation of a constitutional amendment therefore involves a consideration of both the legislative intention in proposing the amendment, and of the intent and understanding of the voters in adopting the amendment. The Illinois Supreme Court has repeatedly recognized that the "true inquiry" in construing the constitution "concerns the understanding of its provisions by the voters who adopted it." *Paper Supply Co.* v. *City of Chicago*, 57 Ill. 2d 553, 559 (1974).

In interpreting article IX-A of the 1870 Constitution to mean that trustees and other fiduciaries, whether corporate or not, are not exempted from personal property taxation, the Illinois Supreme Court has extensively examined the pertinent legislative materials to determine the legislative intent in proposing the amendment. See *Hanley* v. *Kusper*, 61 Ill. 2d 452 (1975). However, the Court has not seriously considered the intent and understanding of the voters in adopting the amendment. Illinois law requires that,

> The General Assembly in submitting an amendment to the Constitution to the electorate shall prepare a brief explanation of such amendment, a brief argument in favor of the same. . . . The minority of the General Assembly, if they so desire, may also prepare a brief argument against such amendment. (Ill. Rev. Stat., 1975, ch. 7½, § 2.

Pursuant to this statutory direction, the General Assembly prepared such arguments for and against-article IX-A. In the arguments in favor of the proposed amendment, there

is no indication that article IX-A would not apply to personal property held in trusts for the benefit of natural persons. However, the arguments against the proposed amendment, which were corrected with specific reference to this matter, contain the following language:

> That [personal property] which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes.

This argument against the proposed amendment was unquestionably as valid a part of the Report required to be prepared by the General Assembly as any other information submitted to the voters. Being incorporated in the Report, it is almost certain that the voters would carefully weigh the statements contained in both the arguments for and against the proposed amendment before deciding whether to adopt it. Had the Illinois Supreme Court analyzed article IX-A primarily from the voters' perspective, it would clearly have been seen that at the time of adoption these voters understood and intended personal property held in a fiduciary capacity for the benefit of natural persons to be exempted from taxes.

Following the adoption and ratification of article IX-A, the Illinois Attorney General issued two opinions interpreting the amendment as exempting property held in trust where the effect of the tax would be on a natural person, as distinguished from a corporation. Likewise, the State's Attorney of Cook County, Illinois, issued an Opinion that, based on the published argument against the proposed amendment, "the clear import of this legislative explanation is that personal property held in a fiduciary capacity for the benefit of natural persons shall not be subject to the personal property tax."

Despite the certain reliance of Illinois voters on the full legislative explanation of article IX-A in the Report, the Illinois Supreme Court stated in the *Hanley* decision that the Court is "not justified in relying upon arguments against a proposed constitutional amendment 'as seen by the minority' to determine its meaning after adoption." The crucial question emerging from the instant case, however, is whether the *people* of the state are justified in considering all of the official explanatory statements of the General Assembly *prior* to the adoption of a proposed amendment. By specifically refusing to give credence to the clear legislative assertion in the arguments against the proposed amendment, the Court's decision sets a disturbing precedent for future voters by effectively directing that they may no longer rely on legislative statements made for the distinct purposes of clarifying a proposed constitutional amendment and enabling them to make an intelligent decision as to its adoption.

Instead of examining voter intent in adopting Article IX-A, the Court has erroneously relied on Senate Joint Resolution No. 67, which was never mailed to the voters, to determine legislative intent. Thus, in *Lake Shore Auto Parts Co.* v. *Korzen,* 49 Ill. 2d 137 (1971), the Court concluded, in the language of the Resolution, that by use of the phrase "as to individuals," the General Assembly intended to abolish ad valorem taxation of personal property owned by "a natural person, or two or more natural persons as joint tenants or tenants in common." On remand, the Court held that since "[t]rustees and other fiduciaries, whether corporate or not, do not own property as natural persons, . . . they were not exempted from taxation by Article IX-A." (54 Ill. 2d 237, 239) Again in *Hanley,* the Court relied in good part on the Resolution in rejecting the claim that personal property held in trust for natural per-

sons is exempt from taxation. In the instant case, the Court simply found the *Hanley* decision dispositive of this issue. In none of these decisions construing article IX-A did the Court address the fact that Senate Joint Resolution No. 67 was not submitted to Illinois voters, and could not have been considered by them in approving the amendment.

In actuality, however, the General Assembly obviously knew that Illinois voters would rely on the legislative statement that property held in trust for natural persons was exempt from taxation when it purposefully corrected a previous statement that trusts were not exempt from personal property taxes. In analagous situations, the Secretary of State is required by law to submit to the Attorney General for approval certain propositions other than constitutional amendments, as well as "such statements or suggestions as may be necessary for a proper understanding of said proposition." (Ill. Rev. Stat., 1975, ch. 7½, § 9). Assuredly, the Attorney General would never knowingly approve material misstatements of fact nor allow misleading suggestions to be submitted to the voters. The Illinois Supreme Court should have attributed to the General Assembly at least as great a concern regarding all of the statements made in connection with a constitutional amendment.

CONCLUSION

For the reasons stated herein, it is the position of the State of Illinois as *Amicus Curiae* that *certiorari* should be granted in the instant case so that the decision of the Illinois Supreme Court may be reviewed.

Respectfully submitted,

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